

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1973

No. 73-1265

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WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED  
STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED  
STATES BUREAU OF PRISONS,

*Petitioners*

—v.—

THE WASHINGTON POST Co. and BEN H. BAGDIKIAN

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA CIRCUIT

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INDEX

	Page
Docket entries .....	1
Complaint and exhibits .....	3
Plaintiffs' exhibits in support of preliminary injunction .....	64
Defendants' exhibits in opposition to preliminary injunction..	71
Memorandum of March 13, 1972 .....	78
Transcript of March 23, 1972, hearing .....	80
Trial exhibits .....	232
Plaintiffs' motion to reopen .....	265



	Page
Defendants' opposition to motion to reopen .....	276
Memorandum opinion of April 11, 1972 [Appendix A to Petition for Writ of Certiorari] .....	
Declaration and order [Appendix A to Petition for Writ of Certiorari] .....	
Notice of appeal .....	282
Court of Appeals order or remand [Appendix C to Petition for Writ of Certiorari] .....	
Transcript of Hearing of November 21-22, 1972 .....	283
Abel Deposition (Pl. Exh. 14) .....	478
Machacek Deposition (Pl. Exh. 63) .....	500
Bensinger Deposition (Pl. Exh. 64) .....	524
Mattick Deposition (Pl. Exh. 65) .....	573
Government Exhibit 13 .....	612
Government Exhibit 12 .....	616
Extract from Government Exhibit 10 .....	617
Extract from Plaintiffs' Exhibit 15 .....	619
Plaintiffs' Exhibit 22A .....	620
Plaintiffs' Exhibit 29A .....	622
Plaintiffs' Proposed Finding of Fact and Conclusions of Law [Appendix E to Petition for Writ of Certiorari] .....	
District Court's Supplemental Opinion [Appendix B to Petition for Writ of Certiorari] .....	
Court of Appeals opinion [Appendix F to Supplemental Petition for Writ of Certiorari] .....	
Bureau of Prisons Policy Statements:	
Nos. 7300.2B .....	626
7300.4A .....	630
2001.2B .....	637
7300.1A .....	650
Order Allowing Certiorari .....	656

## [111] AFTERNOON SESSION

(2:20 p.m.)

THE COURT: We can go ahead with the Washington Post case now.

You are calling your psychologist?

MR. CALIFANO: Your Honor, Dr. Gould could not remain. He had to go back to New York. But, we have talked to the Government counsel, and we will put on Mr. Leland now. And, they put on their witnesses that have to leave town.

THE COURT: All right.

MR. CALIFANO: We may even make it this afternoon.

THE COURT: All right.

Then, you will want to out or order take your people that have to leave town?

MR. KATZ: Yes. I apologize to the Court.

THE COURT: There is no problem in my mind about it.

MR. KATZ: I made the statement this morning that we had one witness that was a problem. In fact, we have two.

THE COURT: You have two.

MR. KATZ: Yes.

THE COURT: I will hear them.

MR. KATZ: Thank you, your Honor.

THE COURT: I will hear them.

MR. WILSON: Mr. Leland.

[112] Whereupon,

**TIMOTHY LELAND**

was called as a witness, and having been first duly sworn by the deputy clerk, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. WILSON:**

**Q** State your full name and place of residence for the record, please.

**A** My name is Timothy Leland. I live at 220 Dorset Road in Newton, Massachusetts.

**Q** Where are you employed, Mr. Leland?

**A** Boston Globe.

**Q** In what capacity?

**A** Assistant managing editor.

**Q** How long have you been employed by the Boston Globe?

**A** Nine years.

**Q** Prior to joining the Boston Globe, did you have any other training or experience in journalism?

**A** Yes.

**Q** Would you describe that training?

**A** I graduated from the Columbia Graduate School of Journalism in 1961, after which I went to work for the Boston Globe, first as a general assignment reporter, and then assigned as a medical editor.

In 1963 I was hired by the Boston Globe as the science [113] editor.

In 1965 I was assigned to State House Bureau. I became the State House Bureau chief in '66.

I was named assistant city editor in 1968. In 1969 I took the year off and traveled on a traveling fellowship to Africa, and then served six months at the London Sunday Times in London, and I served on their investigative team called "Insight," after which I returned to the Boston Globe and formed and headed a team called Boston Globe Spotlight Team.

I was named assistant managing editor in 1970.

Q Mr. Leland, just to clarify your testimony, you said after leaving the Columbia Journalism School you went to work for the Boston Globe?

A Boston Herald.

Q From there you went to the Boston Globe?

A That is right.

Q Mr. Leland, have you been the recipient of any awards or prizes as a result of your work in journalism?

A Yes, I have.

Q Would you tell the Court which prizes and awards you have won?

A In 1968 I was cited for distinguished reporting by the American Political Science Association. In 1970 I received the Pulitzer Prize for investigative reporting as well as the Sigma Delta Chi bronze award for civic service, [114] and the United Press International investigative award, and Rotogravure-Best-Magazine-Story-of-the-Year Award.

Q What is the Sigma Delta Chi that you mentioned?

A Sigma Delta Chi is the journalism professional society.

Q Mr. Leland, you mentioned that after returning from London in 1970, I believe it was, you formed the Spotlight Team of the Boston Globe.

A That is right.

Q Would you explain what the Spotlight Team is, please?

A The Spotlight Team is a four-member full-time unit engaged in the pursuit of what we think of as active reporting as opposed to passive reporting. We at the Globe have come to the conclusion that newspapers are essentially and have been essentially reactionary in a true sense of the word. We tend to react to events that have already occurred and respond to situations that have taken place outside of our own activity.

And, we believe that it behooves the press both for its own individual interest and interest of the public at large to engage in more creative active pursuit of information, which is what we are doing at the Spotlight Team.

Q Now, is the Spotlight Team at all unusual in terms of its concept in American Journalism?

A Only insofar as it is a four-member team, which is a [115] rather large number. Most newspapers have one or two individual investigative reporters.

We institutionalize it on a full-time basis. We have certain techniques which are fairly conventional in terms of investigative reporting at large.

Q Mr. Leland, what has been the type of news story that Spotlight Team has focused on?

A We are largely concerned with public corruption or malfeasance incompetence of some degree.

Q Now, you say that you have developed certain techniques which are somewhat distinctive with the Spotlight Team. Could you describe those, please?

A Well, a typical investigation would begin with a tip of some sort either by letter or by telephone, and we spend a good deal of time trying to establish the credibility of this information by engaging in a face-to-face interview with the person who is making this information available to us. And, having done so, if we decide that there is enough merit and credibility to the information received, we proceed with the investigation, which breaks down generally into two parts, one of which is a paper research—attempt to obtain as much information as we can from public documents of various sorts, and the second half of that phase of the investigation is a personal interview technique, which may take three, or four, or [116] five weeks, or even as much as three months, in which we attempt to interview as many people as we possibly can and evaluate or corroborate the evidence that we have obtained through the records.

Q Now you say that your first step is to have a face-to-face encounter with the source of the tip, is that correct?

A Yes, sir.

Q Why is that important in your operation?

A Well, we are involved in a fairly high priority, high potency operation. These things take, as I say, up to three months or four months, and we are not anxious to set out on a pursuit of this sort without being quite sure that there is something there.

So, it becomes incumbent upon us to prove to our own satisfaction that this information is coming from a reliable individual and is credible in every way.

Q Can you illustrate from your experience some examples of the effect of face-to-face interview with the initial source?

A Yes, I can.

Q Would you please?

A There are many examples that come to mind, one of which would involve the investigation that led to the Pulitzer Prize. We had a tip that there was a great deal of malfeasance and mismanagement involving the Sumnerville officials from a [117] source that called us up and told us that he had given information to the Attorney General's Office of this sort in Massachusetts, and that had been about a year previous, and nothing had come of it, and he would like to come and talk to us.

The Attorney General's Office in Massachusetts is quite an effective one. It is quite efficient. We have quite a lot of regard for it. And, it didn't appear to us that it was likely to produce anything that we pursue. But, as we do in all these cases, as I say, we did ask him to come in, and we in effect cross-examined him for a period of several hours one afternoon.

This man appeared to be very rational, very intelligent and had no particular ax to grind and had some information that appeared credible.

So, we made the judgment that we would pursue this. It took us about three or four months to do it, but in the end the information we came up with resulted in 120 indictments against 29 individuals, three of whom were former mayors and various city officials.

Q What has been your experience with the Spotlight Team in terms of whether the accurate effect of reporting of news has a critical dependence upon the opportunity for face-to-face interviews?

[118] THE COURT: Vis-a-vis prisons. I don't care about if it is of critical importance on reporting nuclear energy. I want to know about prisons. That is what I am concerned about. I am not concerned with the other areas.

BY MR. WILSON:

Q Mr. Leland, have you had any experience in covering prisons?

A Yes, I have.

Q Would you describe that experience, please?

A I have had a couple. One involved the case of an individual who pulled his eyes out under drugs in Baltimore. This particular individual was the son of a Massachusetts political figure, and we decided to try to come up with a profile of his experience and how he came to find himself in jail under these circumstances.

And, one of the things that he alleged was that he had been very badly mistreated when he was arrested on another issue and had been put in jail, and he had been abused while he was in jail, and had been deprived specifically of water the night he pulled his eyes out. And, in a fit of great physical stress he had taken this step.

We wanted to check this out, of course. We came down and had long interviews with him. He wasn't in jail at the time. He just recently had been released. And, we also had interviews in jail with his associate or [119] accomplice of his in a drug world that he came out of.

And, in the course of this face-to-face personal kind of interviewing, we came to the conclusion that this was a very unstable, really quite unreliable individual who had an experience of great trauma in jail. But, we couldn't find any evidence at least to our satisfaction that it had been caused from any problems that the police officials had created for him.

The evidence that we got from him personally was corroborated largely by his friend or associate whom we did interview in jail.

And, as a result of those particular interviews, when we came to write the story, we took some pains to down-credit his own charges of mistreatment in jail.

Q Would you say that in that instance the opportunity for face-to-face interview in the jail was critical to developing an accurate and effective story?

MR. KATZ: Objection, your Honor.

THE COURT: That is leading.

BY MR. WILSON:

Q What was your experience, Mr. Leland, in terms of the importance of the opportunity for face-to-face interview in the Baltimore jail in that instance?

A Well, I can only say without the chance to interview this person personally or get a personal feeling for his [120] credibility, which you can really only do when you talk to an individual, we probably would have had to go with his original charges and publish them as he made them, which we didn't feel would have been in the best interest of the prison officials or our responsibility as a free press.

Q Have you had any other experience with coverage of prisons or jails?

A Yes, I have.

Q Could you describe that experience?

A Recently we have had an incident at a jail in Massachusetts—Charles Street Jail, which does not fall in the immediate jurisdiction of Commissioner Boone, whom I believe this Court has heard testimony from.

This incident of last week involved, as I say, a riot and has subsequently resulted in allegations of guard brutality and mistreatment of persons who participated in that riot.

I, myself, didn't cover the incident as a working journalist, but I was serving in the capacity of acting managing editor last week, and was bothered, frankly, in the way that Boston Globe and other papers in Boston were forced to present the story, because we were not given an opportunity to interview the prisoners themselves.

This resulted in our having to print the allegations that came from the lawyers' experiences, which were flatly that [121] they had been badly treated and abused and brutalized. And, the result was rather grim black headlines to this effect.

I didn't feel that we were adequately enabled to make a judgment based on some personal observations in this connection.

I felt and I feel right now that the rules of that particular jail which prevented us from going in and talk-



ing to these people were such that lead to the—contrary to the interest of the prison officials themselves.

Q What do you mean by personal observation? You used that term.

A Personal observations are the kinds of observations that anybody derives from face-to-face contact. There may be physical evidence of beating or mistreatment. There may be just the kind of personal evaluations that you make from individuals when you are given a chance to talk to them.

Q So, you are saying that included the fact that you were unable to talk—the reporters from the Globe were unable to talk to the inmates in that particular jail?

A That is right, under the regulations of that particular jail.

Q You said that you did not actually participate in writing that story or actually doing any on-scene coverage.

A That is right.

Q Did you play any role at all in the development of that [122] story?

A Well, as acting managing editor, I was responsible for the paper's treatment and coverage of the story.

As I said, we had to go with what we—as they say in Journalism School, you go with what you have got. If you don't have enough to give the thing any depth and dimension or corroboration, you simply go with the information that is available to you at the time.

Q Is it your testimony that you were not satisfied with what you got?

A That is correct.

Q Mr. Leland, were you in the courtroom this morning when Dean Fisher testified?

A Yes, sir.

Q Do you recall that I read into the record at that time two sentences from the Government's brief in the Court of Appeals?

A Yes, I do.

Q I will not reread that at this time. I put before you a copy of that excerpt. I would like to ask you a few questions based on it. You may take some time to review it, if you wish.

A All right.

Q Mr. Leland, would a story relating to prison conditions [123] or prisoners' grievances fall within the purview of the work done by the Spotlight Team of the Boston Globe?

A Yes, sir.

Q If the Spotlight Team would undertake a story dealing with prison conditions or prisoner grievances, would you be satisfied—we are talking about the Federal Prisons and the policy reflected in those sentences relating to the Federal Prisons—would you be satisfied that you could develop an accurate and effective story from the sources of information that are set forth in that excerpt from the brief?

A No, I wouldn't.

Q Why is that, Mr. Leland?

A Well, clearly, if you are going to get a three-dimensional picture of grievances, you would have to have some access to the people that are making known these grievances. As I read this, we would have access only on a face-to-face basis with the prison authorities, whose natural inclination would be to deny them or to turn them aside.

THE COURT: Mr. Leland, let me see if I can get at more sharply what I think is being put before me.

Here are a group of people that are penned up by orders of judges whom the executive is keeping from talking to the press, so you don't have access to them. But, aren't there all kinds of situations where your story would be better if you could really get access in the complete sense that [124] you would like it.

Certainly you have written stories about Governor Sergeant up there without talking to him sometimes when he hasn't wanted to talk or comment, or you have written stories about other situations of a governmental character where the people involved haven't let you talk to them.

Isn't it just the fate of a newspaperman that he just doesn't always get access to the total source so to speak.

What is there that is different about this than what you run into in everyday life in a lot of ways.

Can you interview people in a home for the retarded? Take Furnel Home for Retarded in Waltham. They have some 1800 inmates, I believe. Can you go in there and interview those inmates about the way they are being treated, or are you stopped by the authorities?

THE WITNESS: I am not clear, your Honor, what the regulations are in the Furnel School.

THE COURT: Take an insane asylum. Can you go into an insane asylum and talk to people?

THE WITNESS: I am not aware that we are not able to, no.

THE COURT: Are you aware that you can?

THE WITNESS: Presumably it would be a little more of a problem to communicate with a legally insane individual, [125] your Honor.

THE COURT: A lot of those people are wholly competent though legally insane. At least, they are around this town.

THE WITNESS: Of course, as far as the Governor is concerned, we do have access to him through press interviews.

THE COURT: Through his press man.

THE WITNESS: He holds press conferences. We are given a chance—

THE COURT: Let's talk about the national scene. Lots of times you can't talk to the President. Mr. Ziegler tells you what he wants to tell you. He may not tell you what you would like to hear.

I don't mean that as criticism, but that is just the way it is.

If you want to go into the intricacies of the military at a certain point you are met with a stone wall.

You can't see Mr. Laird. You can only see some assistant's secretary who says he doesn't want to comment.

What is the difference between prisons and anything else?

THE WITNESS: You speak of the President. Again, we do have an opportunity to speak to him.

This regulation here, as I read it, is a flat denial at any time of any chance to discuss the matters of personal

[126] grievance with the people that have made the allegations.

THE COURT: Is there any other comparable situation that you know of?

THE WITNESS: I don't think there are many other comparable situations.

THE COURT: Does Boston let the police force talk to you?

THE WITNESS: Sir.

THE COURT: Does Boston let the individual policeman make allegations to you concerning the way they have been disciplined or treated by the Commissioner of Police.

THE WITNESS: Well,—

THE COURT: Or, would they get fired if they do?

THE WITNESS: I don't believe there is a flat governmental policy that they cannot. If we found that there was such a one, we would be unhappy about it.

THE COURT: I understand that you are unhappy. I am really not disagreeing with you. You must be aware of what I have said in this case.

What I am trying to get at is what is so different about prisons as you see it as a reporter with broad investigative experience? Is it any different than anything else?

THE WITNESS: I think it is, your Honor. It is totally different.

[127] THE COURT: How?

THE WITNESS: It is different in the nature of this stated quite specific and explicit regulation which flatly denies us access to the people that are making the allegations.

This is a public facility. These people are being supported by public funds. The people who are given the responsibilities for keeping them are being paid for by public tax money, and they should be held accountable for the treatment and kind of operations that they are pursuing.

THE COURT: Well, then, let me pursue that with you. The FBI is involved in a hijacking situation.

THE WITNESS: Yes.

**THE COURT:** You can't talk to the agents. You can't go talk to the agents and say, "Now, tell me, who gave you the orders? Was there any warning given to the gasoline truck? Who told you to shoot the tires? Why didn't you shoot them sooner?"

They just say, "No."

**THE WITNESS:** I would say there are perhaps two particular aspects to that that would be worth discussion. One is that you are presenting a situation which is of an emergency sort. At least I assume that you are talking about an ongoing hijacking.

**THE COURT:** Or, after it is over.

**THE WITNESS:** Well, the FBI has been prepared to explain [128] and discuss their activities.

**THE COURT:** So is the warden of a prison. The warden of a prison will give you a very full statement of what happened. The warden will give you a very full statement often of a somewhat exculpatory character.

**THE WITNESS:** But, there is an adversary relationship in prisons that is perhaps missing in hijackings.

We are not talking about the allegations of the warden in the jail situations. We are talking about the allegations made by the prisoners themselves. These are the people we are trying to talk to, not the wardens.

In fact, we can talk to the warden. That is the problem. The warden has his own interest at stake. He is subject to all of the inclinations of human nature that most individuals are. When pressed under suspicion of malfeasance or some kind of incompetency, he is obviously going to deny them flatly.

If we as press people who are trying in a responsible way to get a full dimensional picture of these charges—we are absolutely and hopelessly handcuffed if we can't go to the other side. It is an unfair situation. It is an infringement both on our own abilities as a free press and not in the interest of the public at large which has a stake in the wellbeing of the institutions that they are [129] supporting.

**THE COURT:** I have tried to analyze it in my own mind. The only distinguishing factor that I can see is that in other places in our society, if an individual de-

sires to bring to the attention of the press a grievance of some kind, regardless of the rules pertaining to him, he can do so. He may forfeit his job, or he may even be subject to criminal penalties, if he breached security or something of that kind. But, he had his own right to do that.

THE WITNESS: That is true.

THE COURT: And, take the consequences.

And, I can't think of any other situation in our society where citizens are prevented from having any choice about the matter whatsoever.

THE WITNESS: I can't either.

THE COURT: I mean, if a soldier talks, he will be disciplined. He may be shot, but he has still the opportunity to make his choices. And, I can't think of any place else in our society where an individual isn't given that choice.

I have been wondering whether perhaps that is the differentiation, whether it is significant or not, I don't know, but the differentiation between this.

The mayor's secretary, for example, up in Boston, or some other official's secretary knows she is going to lose her job if she tells you about some kind of bribe or some kind [130] of corruption that she has observed, but she has that choice, doesn't she?

THE WITNESS: That is true.

THE COURT: And, the prisoner has no choice.

I don't know whether that is the only difference, but it seems to me that is the thing that makes this of particular concern, because there is no access even where the person who wishes to present to the press a grievance has any alternative but silence, except a letter.

THE WITNESS: Or violence.

THE COURT: Except the letter. He can write. Now, what is wrong with his being able to write?

THE WITNESS: Well, writing is a very ineffecient and inadequate way of conveying—of communicating. We know that an interview is a dynamic process.

A police detective seeking information from a suspect does not communicate by mail. If he did so, he would find it extremely ineffective.

You obviously in the course of an interview—it is a dynamic process. It goes off in many avenues and can be pursued instantly on a face-to-face confrontation.

By mail, obviously, presuming that the inmate can communicate by mail, which I think is somewhat questionable, you don't—you simply don't get the depth and scope of information that you do in a face-to-face interview.

[131] You also don't get that ability which I have referred to before to evaluate the credibility of the individual who is making this allegation.

In fact, you don't even know whether the individual who is writing this letter is the one that is making the allegations. It could be somebody entirely different.

We are operating in limbo, really, when we are dependent upon something that comes from somebody when we can't even establish who wrote the letter, assuming that it is comprehensible to begin with.

MR. WILSON: You have asked my questions, your Honor. I have no further questions.

THE COURT: I didn't mean to do that, Mr. Wilson.

MR. WILSON: It is perfectly all right.

### CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Leland, other than the two matters that you discussed earlier in your direct, you have had no experience in prison journalism, have you?

A None except those two.

Q Have you ever actually visited a prison?

A Yes, I did have that interview in the Baltimore prison that I referred to.

Q What prison was that?

A A prison in Baltimore. I am not sure. It was a big [132] fortress-like affair down in the middle of Baltimore.

Q Baltimore, Maryland?

A Yes.

Q Now, with respect to—



**THE COURT:** Do you send reporters in to interview the prisoners?

**THE WITNESS:** In this particular instance—

**THE COURT:** No, I mean, have you had prison stories where you were sending reporters into prisons?

**THE WITNESS:** Yes, we have from time to time. We have a lot of other aspects of society that we are interested in. This is only one of them.

**BY MR. KATZ:**

**Q** Now, your Spotlight Team, or whatever you referred to earlier, that has not gone into the prison situation, has it?

**A** Well, I was operating as a member of the Team when I did this interview in connection with this boy that pulled his eyes out.

**Q** When was this?

**A** I believe this was in the spring of 1970.

**Q** Now, the people that you interviewed in the jail were others, not the gentlemen that pulled his eyes out?

**A** Well, I did interview the prisoner that pulled his eyes out. He was not in jail at the time.

**Q** He was not in jail.

[133] **A** The person that I interviewed in jail was supposed to have been arrested at the same time that he was. The man that pulled his eyes out had been let out of jail because of that.

**Q** What was your purpose in interviewing this gentleman, sir?

**A** The accomplice?

**Q** Yes.

**A** Well, actually to try to establish from his point of view how—what kind of an individual this man was, and whether he was a reliable person, or whether he was paranoid or freaked out or just how good a source he was.

**Q** Could you not have achieved the same purpose by finding out who this man's friends were who were not in jail and interviewing them?

**A** I am sorry.

**Q** I say, could you not have achieved the same purpose that you wanted to accomplish by interviewing the man



in jail by learning the names of friends of the fellow who pulled his eyes out who were not in jail and asking the same questions of them?

A I suppose it is possible. It just turned out that this was his closest friend, and he happened to be in jail.

Q Now, the Charles Street Jail incident—this was last week?

[134] A Yes.

Q You did not personally cover this story?

A No, I didn't.

Q How did this matter come to your attention initially?

A Well, as acting managing editor, it came to my attention in the course of a news conference where this information was conveyed that there had been a riot at this jail.

Q I am sorry, sir. Could you speak up a little bit. I have trouble hearing you.

A The information came to me in the course of a news conference, which is a time of day when stories are presented to the editor. I was acting editor at the time. It came to me in that interval.

Q By news conference, you mean a news conference held by the warden over there?

A No.

THE COURT: The newspaper's morning conference to determine the stories they would cover, and what stories they would play up, and who would take what assignment. That happens with every newspaper every day. That is what you are talking about, isn't it, sir?

THE WITNESS: Yes, sir.

BY MR. KATZ:

Q Very well. The question I asked though is how did you first learn that something was going on in the Charles Street [135] Jail?

A I can't remember whether in the course of the day I had gotten a report from a reporter, or whether it came at that conference that I was referring to. But, at some point in the day, I was told that there had been a riot at the jail.

Q What did you do?

A I indicated to the city editor we should do our best to get as much information about this riot and the background of it and why it occurred as possible.

Q And, in order to accomplish that, what did you do?

A What did I do?

Q Yes. Did you send people out?

A The city editor then assigned reporters to that job.

Q And, what did these reporters do to cover the story?

A They went to the jail and listened to a press conference held by the warden or the sheriff actually, who acts as warden, and also to the lawyer who represented the inmates inside.

Q Were you permitted to enter the jail?

A I am not clear whether the press conference itself was held inside the jail. I believe it probably was. Certainly not within a cell block or within the vicinity of the prisoners themselves.

Q Do you know whether your reporter was permitted to [136] tour around the jail?

A I don't believe that he was, no.

Q Do you know if they have some policy over there at the Charles Street Jail which prohibits all access of the media?

A I think it is a fairly spontaneous policy given the situation that arises. If the sheriff doesn't feel it is in his interest to let the press in to talk to the prisoners, he doesn't give permission.

Q Now, you are aware, are you not, having read that statement that you have in front of you, that under the policy that is at issue in this case, the inmates of institutions have the right to write free and uncensored letters to the media?

A Yes.

Q And, that the medias have the right to visit the institutions and tour the institutions?

A Right.

Q And, for the most part, excepting some emergency situations, see anything that they want.

A Right.

Q And, during the course of such tours they may engage in conversations with inmates whom they might run across. Now, do you feel that—

MR. CALIFANO: Your Honor, I think Mr. Katz should explain conversation.

[137] THE COURT: I understood what he meant by conversation. He doesn't mean conversation. He means a word or two.

THE WITNESS: Could I ask one question in connection with this? Is it possible under this regulation for the newsmen to ask specifically to talk to, you know—

BY MR. KATZ:

Q An identified inmate?

A Identified inmate.

Q No.

You would not consider this policy to be a total restriction on the media to cover the affairs of federal institutions, would you?

A Well, I don't think it is a total restriction, but I think it is a very unsatisfying one from my point of view as a working newsman.

Q And, this is for what reason?

A For the reason that it is clear that we wouldn't be allowed to talk to the very people that we are there to investigate. We would, I assume, be allowed to talk to the odd inmate who may or may not have anything to do with the situation that brought us there in the first place.

Q Now, isn't it true though that under that policy statement you would be able to check out most allegations made by prisoners, say, which would have been received by mail, to determine whether they had any substance or not?

[138] A This is not at all clear to me. I mean, here I am walking through the prison, and I happen to pass a guy who is cleaning dishes, and I stop probably in the company of a prison official, and I am asked or I have the opportunity to question him about something that he may not know anything about, in the presence of some-

body who probably would be quite interested in how he responded.

This is not giving me an opportunity to interview in depth and in some degree of isolation the individuals who have contacted me specifically with a grievance.

Q Have you ever personally received or seen any correspondence from prisoners making accusations against prisons—grievances?

A I believe I have. I wouldn't be able to give you precisely. I could give you an impression. I can't recall specific allegations.

Q I don't want an impression. I want to know if you can state any specific grievance which you have received.

A I couldn't.

Q All right.

Would you Honor indulge me?

THE COURT: Yes.

BY MR. KATZ:

Q Based on the statement which you have in front of you, it is possible, is it not, for you to write a story?

[139] A You can write a story about virtually anything at any time. But, I feel that the regulations that are before me here would make it virtually impossible to write a responsible story both from the prisoners' point of view and the institution's point of view.

Q But, as a matter of fact, you did, did you not, under what you describe as apparently being more stringent restrictions than those you have in front of you, nevertheless, you went ahead and wrote a story about the Charles Street situation, didn't you?

A I did. And, I felt it was very very irresponsible.

Q Thank you.

THE COURT: You are excused. Thank you, sir.

(Witness leaving stand.)

THE COURT: All right, Mr. Katz. You have some witnesses you want to put on?

MR. KATZ: Yes. Mr. Alldredge.

THE COURT: All right.

Whereupon,

NOAH L. ALLDREDGE

was called as a witness, and having been first duly sworn by the deputy clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q State your full name and residence.

[140] A Noah L. Alldredge. U. S. Penitentiary Reservation, Terre Haute, Indiana.

Q What is your occupation?

A I am warden at the institution of the U. S. Penitentiary.

Q Do you report to the Federal Bureau of Prisons?

A Yes, I do.

Q Are you the same Mr. Alldredge who has given testimony previously in this case?

A Yes, I am.

Q And, at that time you were the warden of the U. S. Penitentiary at Lewisburg?

A That is correct.

Q Mr. Alldredge, when did you become the warden at Terre Haute Penitentiary?

A July 7, 1972.

Q Would you describe to his Honor what type of institution the Terre Haute Penitentiary is?

A Terre Haute Institution, your Honor, is an institution consisting of a complex of two institutions. The main institution has a population of approximately 1000. About one quarter mile from that institution there is a farm camp with a population of 300.

The main institution has a double fence surrounding it. It has both cell blocks—domitories and inside cell blocks, sir.

[141] Q How is this institution characterized as to degree of security?

A It is considered that it can handle up to and including maximum security prisoners.

Q What is the present inmate population?

A 1346 when I left the institution—in both institutions.

Q And, what is the general range of offenses for which these persons are incarcerated?

A Anything that would receive a sentence exceeding a year and a day up to and including fifty-year sentences for violent crimes.

Q Are these all sentenced prisoners?

A Yes, they are.

Q All right.

A Excuse me. Occasionally we do receive a study case from the District Court Federal judges asking us to do a study—psychological study.

THE COURT: Under 4208?

THE WITNESS: Yes, sir.

BY MR. KATZ:

Q Are all of your inmates committed from Federal Courts?

A Yes. Oh, we do have—Yes, they are all committed under Federal Court except those who are transferred to the institution from state jurisdictions by authority of the Director of the Bureau of Prisons.

[142] Q Why are these persons transferred to Federal Institutions?

A There might be several reasons. Protection of the person from reprisal from some other group of prisoners in another institution, or it is possible that they can constitute a threat in the opinion of the Commissioner and Director of Corrections for that particular agency, and they ask us to take them because of their danger and threat to that institution.

Q How many do you have at the present time who are in that category?

A We probably have—I can't give you an exact figure. Probably five or six.

Q From what jurisdictions do they come?

A They would come from any jurisdiction.

Q Do you know in the particular cases of the ones that you have now?

A Well, I do know, for example, that we do have two from the State of Massachusetts. We have one from—I believe Maine, but I can't—I have only been there four months, and I guess I have a particular reason for being familiar with the two from the State of Massachusetts. That is why I do bring this out.

THE COURT: They also take people from this jurisdiction.

MR. KATZ: I beg your pardon.

[143] THE COURT: They take people from our Court. They take people at Terre Haute that are convicted of local offenses.

MR. KATZ: D. C. Code violations.

THE COURT: D. C. Code violations.

THE WITNESS: That is correct.

THE COURT: If they are a certain type of prisoners. I have several out there.

THE WITNESS: Yes, sir.

THE COURT: They are serious offenders.

MR. KATZ: Yes, your Honor.

BY MR. KATZ:

Q Do you have many troublesome prisoners?

A I think you can best categorize this by saying that you would have ten percent of most prison population in most penitentiaries that would be—including Terre Haute, that would be difficult prisoners, and of that group, five percent would probably be your most difficult, and those most inclined to create problems in the administration of the institution.

Q What type of problems do they generally create?

A Well, there might be assault to officers. There might be advocating violence in the institution. There might be advocating work stoppage in the institution—usually non-violent, or hopefully non-violent. There could be individual confrontations in work areas or recreational areas [144] intended to disrupt the operation of the institution.

THE COURT: You have some psychotic or near psychotic.



THE WITNESS: Near psychotic, yes, sir.

BY MR. KATZ:

Q Warden Alldredge, did there recently come a time when Terre Haute Penitentiary was visited by one George Mische, M-i-s-c-h-e?

A That is correct.

Q And, when did this gentleman visit Terre Haute Penitentiary?

A October 6th, I believe.

Q Of this year?

A Yes.

Q Who was Mr. Mische?

A Mr. Mische was a former prisoner at the United States Penitentiary at Lewisburg, Pennsylvania. He was there about a year when I was there, and later released through CTC, Washington, D. C.

Q What is CTC?

A I am sorry. Community Treatment Center.

Q All right. Proceed. In what capacity was Mr. Mische visiting the Penitentiary?

A As a representative and consultant to Congressman Dellums.

Q And, what did he desire to do in the course of this [145] visit?

A He had identified four prisoners with whom he wished to speak, and he wished to tour the institution.

Q Who were the four prisoners to whom he wanted to speak?

A I believe I can name their last names. One was Arthur Banks. Another was a person named Scalessa. (Phonetics.) Another was named Brown. And, the fourth name skips me, or did I name four?

THE COURT: You named three. It doesn't make any difference what their names were.

THE WITNESS: All right.

BY MR. KATZ:

Q For what offenses were these people convicted, if you recall?



A Arthur Banks was a violator of the selective service laws. Scalessa was, I believe, involved in a conspiracy with Government property totalling something like \$65,00, if I remember. Now, I remember the other person. The other person's name was Radell. (Phonetics.)

Q Radell?

A Yes.

Brown—he has been transferred to Detroit Community Treatment Center. I don't recall having seen his record recently, so I can't tell you—Radell had been charged with [146] possession of illegal weapons and destruction of Government records.

Q Prior to these interviews, were any of these four individuals known to you as troublesome prisoners?

A Primarily Arthur Banks is known quite widely throughout the prison system as being a troublemaker. He was transferred to me from the U. S. Federal Corrections Institution at Danbury.

THE COURT: I would like to be able to join this hearing and understand what it is all about. A Congressman sends somebody out there, and interviews were allowed.

MR. KATZ: Your Honor, we intend to connect this up.

THE COURT: I am not going to sit here and listen to something that seems totally irrelevant unless you give me some indication of pertinence.

A Congressman sends a fellow out to talk to some people, and they let him talk to them. Is that what happened, and they caused trouble?

MR. KATZ: Well,—

THE COURT: Is that it?

MR. KATZ: The point that we are going to make is that the conditions under which these interviews were conducted were the same type of conditions that Plaintiffs contend they should be permitted to have with respect to news media, and furthermore that reports based on these interviews were [147] published in newspapers, and there were certain effects as to which Warden Allredge is prepared to testify.

THE COURT: I guess that is remotely relevant.

MR. KATZ: It is very relevant, your Honor.

**THE COURT:** I don't see that it is very relevant. It wasn't a newspaper reporter. I have a press problem, not a Congressional relations problem.

I would say that the fact that they let a Congressman's assistant in and wouldn't let the press in may be highly irrelevant to the prison authorities. It would seem to me to suggest the arbitrariness of the policy.

Under what possible theory can you justify letting in a Congressman's assistant and not letting in newspapermen? I mean, aren't you just demonstrating, in effect, the selectivity.

**MR. KATZ:** I don't believe so, your Honor. I believe this question came up at some point earlier in these proceedings. We made a point of that.

**THE COURT:** You did let a Congressman's assistants in, and Congressmen were allowed in.

**MR. KATZ:** Congressmen being Government officials that have some responsibility for oversight with respect to Federal Bureau of Prisons and institutions.

**THE COURT:** Does this Congressman have that? Was he on any committee that had anything to do with this?

[148] **MR. KATZ:** I don't know, your Honor.

**THE COURT:** Well, you may proceed. I am having difficulty seeing the relationship.

If a Congressman gives a report of an interview to a newspaper, that could be a totally different kind of report than a newspaper man would make, because I take it he was there to grind an ax. I take it the Congressman was out there to grind an ax, not to get at the facts.

**MR. KATZ:** We would hope that this is not the case.

**THE COURT:** You would hope that? Is that your experience in Washington, Mr. Katz?

All right, you can proceed.

**MR. KATZ:** Thank you, your Honor.

**THE COURT:** But, I would like to get down to the case.

**MR. KATZ:** All right.

BY MR. KATZ:

Q Did these interviews in fact take place, Mr. Alldredge?

A Yes, they did.

Q And, were these face-to-face interviews?

A Yes, they were.

Q And, how long did they go on?

A The shortest about 35 minutes, and the longest nearly two hours.

THE COURT: I take it they were unsupervised interviews, were they?

[149] THE WITNESS: No, sir. They were supervised.

THE COURT: Then, they were not the kind that the press is asking for. In other words, they were supervised by the prison authorities?

THE WITNESS: Yes, they were.

THE COURT: The prison authorities were present.

THE WITNESS: Yes.

THE COURT: Very well.

BY MR. KATZ:

Q Did you give any instructions respecting the nature of the supervision?

A Only two. That they would be supervised, and there would be no exchange of documents between the parties involved, and they would not be subject to overhearing the conversation.

THE COURT: There was somebody there.

THE WITNESS: That is correct.

THE COURT: No contraband.

THE WITNESS: That is correct.

THE COURT: But, the man wasn't listening to what was being said?

THE WITNESS: He listened if they spoke loudly, but they could have a private conversation if they wished.

THE COURT: I see.

BY MR. KATZ:

Q If the parties to the interview had objected to his [150] overhearing, then he would not have been required to stay there and overhear, at least.

A No. They could have talked in a low tone, or he could have stood back far enough from them that they could have conversed privately if they cared to.

Q I see. Now, to your knowledge did the other inmates of the institution know that these interviews were taking place?

A Yes, they did know.

Q Now, did Mr. Mische stop by to see you after he concluded his interviews?

A Yes, he did.

Q Did you have a conversation with him?

A Yes.

Q What was the substance of that?

A In general Mr. Mische was explaining to me and discussing the improvements in the areas of prison reform that he had been able to accomplish and other inmates in the State of Pennsylvania. And, I told him of some of the improvements that I thought I was making at Terre Haute. I did not permit him to tour the institution, you know, as he requested. You brought this out earlier. He asked—He was concerned about this and asked why I had not allowed him to, and, of course, my response to him was that I did not trust him.

Q Why didn't you trust him?

A He had been permitted to tour the institution at the [151] U. S. Penitentiary at Lewisburg, including the segregation units, and talked to any inmate that he wished, including those in segregation, and then he then talked to me and others talked to me later, and did not give my response to the allegations made in any news media after that.

Q All right.

On this occasion did he discuss with you any specific allegations made by any of the persons he interviewed?

A He did not.

Q All right.

Did there subsequently come a time when a matter based on these interviews was published in the newspapers?

A That is correct. The Associated Press, I believe, made the first release.

**THE COURT:** Well, there was no way they could check it, was there, under your regulations? They couldn't come in and ask the prisoners what they said, because you wouldn't let them in. Isn't that right?

**THE WITNESS:** The press at that time?

**THE COURT:** If the press had come to your penitentiary and said, "Look, this Congressman's Assistant says that this is what these men have told me, and we want to go talk to them", you are prohibited from letting them do that.

**THE WITNESS:** They did not name them by name, judge. They could have talked to me, and they could have toured the [152-155] institution.

**THE COURT:** I know. I am talking about talking to the prisoners that were involved. They couldn't do it, could they?

**THE WITNESS:** No, sir, not if they named them. That is correct.

**THE COURT:** So, there was no way they could check on what the Congressman told them that the men said, is that right?

**THE WITNESS:** I think they could have asked me.

**THE COURT:** Oh, yes, but you weren't there.

**THE WITNESS:** Yes, I was.

**THE COURT:** But, you weren't there when the prisoners talked.

**THE WITNESS:** No, sir.

[156] **BY MR. KATZ:**

**Q** Do you know whether Mr. Mitchie is a regular employee or staff member of Congressman Dellums?

**A** To the best of my knowledge he is an unpaid consultant to the congressman.

**Q** Are you aware of any of his other activities, any personal awareness of his personal activities?

**A** Yes. He is a member of a committee—I doubt if I can cite the title, but it is something like The National Committee for Justice Under the Law.

**MR. KATZ:** I would like to have this marked as Government Exhibit 1 for Identification.

**THE DEPUTY CLERK:** Government Exhibit No. 1 marked for Identification.

(Government Exhibit No. 1 marked for Identification.)

**BY MR. KATZ:**

**Q** Mr. Alldredge, I will show you a document which has been marked Government's No. 1 for Identification. I ask you if you recognize it?

**A** Yes, I do.

**Q** Would you tell His Honor what it is, please?

**A** It is a press release by the Associated Press on November 2nd regarding a by-line by Tom Sedgewick. In this press release—would Your Honor care for me to read it?

[157] **THE COURT:** It is up to Mr. Katz. I am waiting to see the relevance of this, and anything he wants to develop I will listen to.

**A** "An independent committee concerned with penal reform said today some of the nation's prisons are hot beds ready to erupt into strikes and possible riots. George J. Mitchie, a former convict and member of the National Coordinating Committee for Justice Under Law said one of the worse was the U.S. penitentiary at Terre Haute, Indiana, and unless somebody steps in and does something there may be another Attica there. Mitchie told a new conference, 'that is a real hell hole—shocking, what we run into in these places.' He declined to discuss Terre Haute further until the committee hears first from the Bureau of Prisons to which it has sent a report. Mitchie and Frank Calahan, another former convict and committee member have visited prisons and consulted with Mr. Ronald V. Dellums, Democrat of California, and interviewed inmates and administrators. The National Coordinating Committee for Justice under Law founded last May is an organization comprised primarily of exconvicts and including professionals and laymen doing the work of umbuds

people and advocating comprehensive change of the legal justice system. They cited instance after instance of what they call intimidation and harassment of prisoners who talked with or who wrote to their congressmen. [158] "Mitchie said the standard procedure for prisoners who complained was to transfer them to another institution."

MR. KATZ: Thank you.

THE COURT: Was that true or false?

A I responded that it was false.

THE COURT: Did the papers print your denial?

A The local press I know did. I do not know whether it appeared in the national press.

BY MR. KATZ:

I would like to offer these documents as Government's Exhibits 2, 3 and 4 for Identification.

THE DEPUTY CLERK: GOVERNMENT'S Exhibits 2, 3, and 4 marked for Identification.

(Government Exhibits 2, 3 and 4 marked for Identification.)

THE COURT: Why did you let the man in—Mr. Mitchie—why did you let him in? You say you had previous dealing with him and you found he was dishonorable, distrustful person, why did you let him in?

A I didn't want to, Your Honor. He was under the auspices of the congressman and I discussed it with a lot of people, and I think I made a mistake—

THE COURT: —I wasn't suggesting that, Mr. Alldredge—

A —I did. I thought perhaps I would lay myself open to [159] criticism, and the institution to criticism and that I had to take this step to ocooperate with the congressman, I suppose.

THE COURT: Because he was a congressman?

A Yes, sir, because he was representing a Congressman and he had identified the people with whom he wished to speak and a letter had been sent to the Director of the Bureau of Prisons making this request, and so al-



though I would have had the authority and the Director supported me I chose to allow him in.

THE COURT: But if there was a newspaperman that you considered responsible working for a responsible newspaper, and your experience with him had been he was responsible and fair you could have let him in?

A I had requested, Your Honor, the local press do an in-depth survey of the local institution and were in the process of doing this I had given him permission to talk with any inmate with who he wished to speak including those men in segregation. They had taken pictures of every type housing from onehalf of the institution up to the time I had a problem which I think will be brought out.

THE COURT: Warden, that was a violation of your policy, wasn't it?

A Not a tour.

THE COURT: That isn't what you said to me. You said [160] in addition to the tour they were permitted to talk individually to prisoners.

A Not identified prisoners as they go about the institution

THE COURT: You mean on one of these walks?

A Yes, sir.

THE COURT: That is consistent with the policy.

BY MR. KATZ:

Q Mr. Alldredge, I show you Government Exhibits 2, 3 and 4 and ask you if you recognize them?

A Yes, I do. These are articles that appeared in the two newspapers in Terre Haute, Indiana and the other in the Indianapolis Star newspaper.

Q What are the dates shown on those articles?

A November 2nd, 1972 on all.

Q Are the newspapers in which these articles appeared circulated throughout your institution?

A Yes, they are.

Q And to the best of your knowledge were these newspapers read by inmates?

A I didn't quite understand.



Q To the best of your knowledge were these newspapers read by the inmates?

A I know they were.

MR. KATZ: At this time I would like to offer Government Exhibits 1 thru 4 into evidence.

[161] MR. CALIFANO: Your Honor, I don't see the relevance.

THE COURT: I don't even know what these are. My feeling is both sides should be able to make the fullest kind of record.

MR. KATZ: I thought we'd be able to save Your Honor's time by not having Warden Alldredge re-read them.

THE COURT: No need for him to read them. I will read them now. I will receive them into evidence. Let me have them. (Handed to the Court.)

(Government Exhibits 1-4 received in Evidence.)

BY MR. KATZ:

Q Warden Alldredge, at the same time these stories were published was this subject matter also covered on radio and TV?

A Yes, sir. It was covered over and over by the radio stations beginning November 3rd, perhaps earlier, but I know November 3rd. Also covered a minimum of three times in its entirety each day by the two local television stations and there are four radio stations in Terre Haute.

Q Did you watch or listen to these broadcasts?

A Yes, I did.

Q Could you relate the general tenor very briefly?

A Well, they were—the problem of Terre Haute being a hell hole and another Attica would develop there if someone didn't step in was the principal direction and content of the programs.

[162] THE COURT: In other words they didn't, as the newspapers did, give equal space to your denials?

A The newspaper did give equal space.

THE COURT: Television didn't?

A They later did, yes, sir. In fact, they paraphrased my response and done it quite well, I think.

THE COURT: You made it very thorough, obviously?

A Yes, sir.

THE COURT: What is the point, Mr. Katz, I am confronting at this stage? An irresponsible man, known to be that, is allowed into the prison, makes false charges, the warden denies them and the television and newspapers print both sides. What has this got to do with the press?

MR. KATZ: Well, the press printed these stories; we submit that—

THE COURT: —they had no access to the prisoners, so they printed what people said. They took a press release from the warden, a very fine, good, well thought out, careful press release and took a statement from the congressman's representative and printed them all, isn't that what happened?

MR. KATZ: That is in essence what happened thus far. I would like to ask the warden what happened further.

THE COURT: Very well. I assume there was turmoil in the prison and I will be glad to hear his testimony, but I can't see what it has to do with what I have to decide, and that is [163] whether newspapermen should be given access to prisoners who want to talk with them.

MR. KATZ: It is our submission that what occurred in this instance could be just as likely to occur had this been a man from the news media rather than the gentleman who did in fact conduct the interviews, we don't see necessarily any difference.

THE COURT: Is that not also true, Mr. Katz, with respect to any newspaperman who goes in on a tour and talks to the warden and writes an unfriendly story about the institution? I mean under your own policy. What difference would it be? I don't see it focuses in on present access to inmates.

You may proceed and make your full record but it would seem to me that a newspaperman, an unfriendly newspaperman—I assume there are lots of them as well as friendly ones, who goes in and perports to have an interview with this gentleman who is a very experienced, competent man and walks around through it and he can say I observed cockroaches, men told me terrible things

about homosexuality, etc., he can print it and that happens, you permit that now under your policy so I don't see how this ties into the narrower issue which I thought was in front of me which is newspaper access to individual prisoners who want to talk.

But you may proceed, I just wanted to indicate to you my trouble with it.

MR. KATZ: All right. Thank you, Your Honor.

[164] THE COURT: What happened in the prison, warden?

A A work stoppage, Your Honor.

BY MR. KATZ:

Q When did that occur?

A Monday, November 6th.

Q Would you describe this work stoppage to the Court?

A Well, the work stoppage began that day and continued for approximately ten days. It was never a full work stoppage. I think it ranged from a high of two-thirds of the inmates not reporting for work up to and including 90% on Thursday—I can't recall the date right now, and this resulted in certain steps we did take that returned the institution to normal on the 16th.

Q So this lasted for how long?

A Ten days.

Q Did this incident have any appreciable effect on the normal function of your institution?

A Yes, it did. I mean of course in all instances such as this it requires a great deal of officer and staff supervision at great expense to the institution, or to the Bureau of Prisons in this instance and requiring some curtailment of some programs although actually we were able to maintain work call every day and we were able to continue visiting and this kind of thing. I did suspend, however, the right of the press to come into the institution proper, based upon the policy statement of the Bureau of Prisons.

[165] Q How long did that stay in effect?

A It is still in effect. The press came in the day the news broke, the first day of the story, and came out and

wanted to come in later but I would not permit them to do so.

Q As the warden of the Terre Haute Penitentiary and based on your experience and qualifications and background as we have established at the previous hearing when you testified, do you have any opinion respecting whether or not there was causal connection between these interviews conducted by Mitchie and the subsequent publication and the work stoppage that occurred a few days later that you described?

A In my judgment the work stoppage was caused by the press release by Mr. Seppey (Phonetic spelling) of the Associated Press and it began to gather momentum in the institution and I think this precipitated the work stoppage at Terre Haute.

THE COURT: So your response has been to bar the press entirely?

A No, sir. We did have a representative—

THE COURT: —I thought you said you barred the press.

A I mean where representatives of all the news media came in one day. But I had numerous requests from the press individually to come into the institution, this I did not let them. I would let them come to my office.

MR. KATZ: Your witness.

[166] CROSS EXAMINATION

BY MR. CALIFANO:

Q Warden Alldredge, is the work stoppage still going on?

A It ended November 16th, I believe is the date, Mr. Califano.

Q Was it peaceful or violent?

A Totally nonviolent.

Q Warden, if these four prisoners or any one of them had written a letter to Mr. Mitchie and told him whatever they told him in the interview and he held a press conference and said Terre Haute was a hell hole and what have you, and the newspapers printed the story, do you think the same thing would have happened?

A He did receive letters from these people which resulted in him coming to the institution.

Q You are not answering my question.

A I'm sorry. Maybe I misunderstood it.

THE COURT: I think what the warden is saying is he had already gotten letters?

A Yes, sir.

BY MR. CALIFANO:

Q So if he had simply held—you said it was the news stories which you thought caused or accelerated the work stoppage. If the news stories had been written on the basis of statements Mitchie made simply because he received letters, you would have had the same work stoppage?

A I think so.

[167] Q And the inmates could have written him letters under your policy?

A Yes; and they do.

Q Warden, did you have any other problems at Terre Haute aside from the visit of these men? Did you have any problems in the prison?

A I had many problems, yes, sir, at the institution.

Q Did you have any racial trouble at Terre Haute?

A Where there is racism there is always racial problems at any institution, yes, sir.

Q Had you had a strike at Terre Haute before his visit and the press stories?

A Not while I was there.

Q Had there been one?

A I am sure there had been. Most federal institutions have had some difficulties.

Q Had you had stabbings there before they had been there?

A I am sure there were, yes.

Q Had you had disturbances at Terre Haute before he visited there?

A Yes.

Q You think despite the fact you had all this other trouble with no stories about Terre Haute that one news-

paper story about Terre Haute that day caused a work stoppage?

A I am completely convinced, yes.

[168] Q And these other events had nothing to do with the work stoppage?

A In an institution—

Q —sir, would you answer the question? These other difficulties had nothing to do with the work stoppage?

A They only included maybe perhaps from two men fighting and the case of a stabbing to maybe fifty men involved in a fight. This is not stopping the entire institution.

Q But these things could have contributed to it. You are saying they could not have contributed to the work stoppage. I am just quoting the statement you made to the press.

A They were not related.

Q All right. Warden, staying with this incident for the moment, you made a statement that these stories were written in the press on the basis of secondhand information. What did you mean by secondhand information?

A Because Mr. Mitchie had talked to the four inmates in question and this—particularly based his leaks on information of one inmate because this inmate made no effort to keep the supervising officer from hearing the information and without ever touring the institution or seeing any of the programs of the institution, the food service or any other part of the institution, he drew this conclusion and made the press release.

THE COURT: I thought you said he had asked to tour the institution and you refused.

[169] A Yes, sir.

THE COURT: I understand then why he didn't.

BY MR. CALIFANO:

Q He really didn't have that option, did he, warden?

A No, he did not.

Q You said the secondhand information, the press was writing from secondhand information—I mean how is the press to get firsthand information about what the inmate said?



A You see I had invited, as I stated earlier, the Terre Haute Tribune staff, the president of the Wabash Valley Press Club and a photographer and another staff reporter had been invited to go into the institution and make such an in-depth survey and after this release I did invite Channels 2 and 10 to the institution, and—

Q —Warden, we have been here a long time, would you just answer my question:

How is the press to write with firsthand knowledge what these four inmates said since you criticized them for writing of secondhand knowledge what these four inmates said under your policy?

A Because it was secondhand information.

Q But how is the press to get firsthand information about what these four inmates said? Could the press have interviewed these four inmates?

A The press could have come in as a result of this and get firsthand information.

[170] Q They could have interviewed these four inmates?

A No, not these four inmates but they could have visited the institution.

Q All right. To make it clear on the record, I think you didn't quite answer the question.

A reporter for a national news organization such as one of the wire services or the New York Times or the Washington Post could not come to your prison and ask, as this congressman's consultant asked, to interview these four identified prisoners and interview them, you would have turned that reporter down?

A Yes, I would have.

Q Warden Alldredge, I would like to go back to the day, March 23, when we were here before in your testimony that day. Do you recall testifying that when you were then at Lewisburg you had some notable prisoners like Bobby Baker, James Hoffa, Martin Zweig, Adonesio, and General Turner (phonetic spellings), is that correct?

A I don't remember the exact wording of my statement but I did mention certain prisoners, yes.

Q Were all those men well known to the public?

A Yes.

Q Was Martin Zweig a leader among the inmates at the institution at Lewisburg?

[171] A He was at the federal prison at Allen Wood, 18 miles from the penitentiary at Lewisburg. He would not have been a leader of any kind at the U.S. Penitentiary at Lewisburg.

Q What was Allen Wood?

A A federal prison camp—a minimum security facility.

Q Was he a leader of the inmates at the minimum security facility?

A I could not say because I did not—I personally only saw Martin Zweig once. He was no problem.

Q He was no trouble maker?

A No.

Q Did you have any reason to think if he had been interviewed by the press he would have become a trouble maker?

A I don't think he would have.

Q Was Bobby Baker at Lewisburg?

MR. KATZ: Your Honor, I object to this. We were into all this at the previous hearing.

THE COURT: I am sure you don't mind making him your witness if you want.

MR. CALIFANO: I would be pleased to make him my witness.

THE COURT: I didn't think we were dealing with the witnesses in that fashion. You may go ahead and make him your witness. This is in the area I have been instructed by the Court of Appeals to develop more detailed testimony.

[172] BY MR. CALIFANO:

Q Was Bobby Baker at Lewisburg?

A No, he wasn't. He was received there and transferred out to Allen Wood Prison Camp.

Q To the minimum security camp?

A Yes.

Q Was he a trouble maker?

A Not to my knowledge.



Q Do you have reason to think if he had been interviewed by the press he would have become a trouble maker?

A The only thing—I don't know but he didn't want to be interviewed by the press himself. This was his statement, the only thing I know.

Q Would you answer my question, please?

A I don't think he would have been. I can't answer, you know, completely on it.

Q Was General Turner at Lewisburg?

A Yes, he was. No, he also was at Allen Wood Prison Camp.

Q The minimum security?

A Yes.

Q Was he a trouble maker?

A He was not.

Q Do you think if he had been interviewed by the press he would have become a trouble maker?

A A trouble maker? No, sir.

[173] Q Was James Hoffa at Lewisburg?

A Yes, at the U.S. Penitentiary.

Q Was he a leader among the inmates?

A He was a strong personality and well known. Yes, I would say he was a person of importance in the U.S. Penitentiary at Lewisburg.

Q Did he have inmates that followed him—into whose clique he fell, or—

A —he had friends, certain friends, but whether you would classify a clique or not I wouldn't be able to do that.

Q Was he a trouble maker in prison?

A No, sir.

Q Do you think if he had been interviewed by the press he would have become a trouble maker?

A I don't know.

Q Was Tino D'Angeles (phonetic spelling) a prisoner at Lewisburg?

A Yes, he was.

Q At Lewisburg itself?

A Yes.

Q Was he a leader among the inmates?

A He was well known to the inmates as was Mr. Hoffa.

Q Was he a trouble maker?

A No, he was not.

[174] Q If he had been interviewed by the press do you think he would have become a trouble maker?

A I don't know.

Q As distinguished from these others where you don't think they would have? You realize there is a difference in your answer as it stands on the record?

A Yes, I realize there is, yes.

Q That is all I wanted.

THE COURT: You said you had out at Terre Haute a work camp—of 300 men?

A Yes, sir.

THE COURT: That is a farm?

A Yes, sir, a farm camp.

THE COURT: Minimum security?

A Yes, sir.

THE COURT: The men allowed into town at all?

A We have men attending Indiana State University and Wabash Valley Vocational Technical Institute, and we have a full academic and vocational training program at that institution within the confines of the smaller institution. I am talking about basic adult education and things like that, judge.

THE COURT: What harm do you see would come from letting the press talk to prisoners in that institution?

A In the farm camp?

THE COURT: Yes, considering the general kind of [175] fellow there is, what he is doing, going to college in the community?

A Well, Your Honor, I can't answer your question perhaps to your satisfaction, but I believe the news media would—there are many problems, including a farm camp as it relates to different agencies of the government like the Board of Parole, their sentencing procedure, and I am still of the personal opinion that this kind of interview would tend to create problems in administration of the institution and problems of those men in the institution which do not exist otherwise because they have access

to the congress, they have access to writ of habeas corpus which they use over and over as you know; they can write anything they wish to the press; they can write any congressman and their administrative assistants; full-time employees do come to the institution and I do think this added need for this, I can't in my judgment, it would have little value for the inmate population.

**THE COURT:** I understand that. My question was, and I respect your opinion, you are an experienced man, but what harm would come? I can see it doesn't bring any value to the institution but my question was what harm would come to the institution?

**A** If the men were being interviewed, for example by the press, they'd be discussing perhaps those things they did not like about the operation of the entire penal system or the parole and probation system and administration in general, and I think this would create problems in perhaps their being able to get the most out of their incarceration.

[176] **THE COURT:** You mean they might say they are not given sufficient educational opportunities and they wish the community would give them more, and that would hurt their educational opportunities? I mean I get letters like that from prisoners almost every week complaining about the lack of educational opportunities out at Lorton which is a federal institution, and it may not even be a prison, but I get letters from that place all the time saying they want educational opportunities that they don't have. What harm would it be if these men complained about that to the press? You would like, I assume as a warden, to see them get more educational opportunities?

**A** Yes, sir, I would.

**THE COURT:** Any responsible correctional man has that in mind. They say they wish there was more drug treatment facilities there and maybe the city could do something to help, what is the harm is what I can't understand, and I respect your opinion, you are entitled to it and I am not trying to disagree with it, I am trying to understand what is the harm that is envisaged from that kind of communication? Because what we have

here is a statement by your superiors that there is a serious harm, a compelling governmental necessity to stop this type of discourse and what I am trying to figure out is what is that compelling government necessity?

A I will answer that there would be less harm in a minimum security facility but I think anything we do in a closed [177] setting such as even the farm life might be would not contribute to and help the inmate himself. I mean it would distract him to some degree because—this is an opinion, judge—that if he becomes involved in talking to the press about the problems he has either personally or the fact he did not make parole, that the parole system is unfair, that he did not receive the vocational training program for whatever reason, that he did meet the criteria when he actually didn't, that this in effect has a tendency to make this person more bitter and perhaps without any gain for him where otherwise he might be more inclined to pursue his education that we have available to him.

Maybe I am not making myself clear, but this is my feeling about it to a lesser degree than it would be inside for a different reason.

THE COURT: And what if he were right, rather than being wrong and he attracted interest from congressmen, interest from community resources, somebody came to you and said: as a matter of fact I think this boy may be right, we don't have enough training here in electronics, or modern automotive engines, maybe we will do something about it, and the next thing you know a Chevrolet dealer comes in and says he wants to help. Suppose he was right?

A The only difference, judge, is that I think the policy of the Bureau of Prisons is sufficiently liberal to permit this—

[178] THE COURT: —by other means.

A By other means, yes, sir.

THE COURT: Very well.

BY MR. CALIFANO:

Q Warden Alldredge, I think if my notes are correct, you testified that the population if we combined Terre

Haute and the camp farm nearby as about 1300 and when you were here on March 23rd you testified the population at Lewisburg was about 1850 at that time. What are the rights of the prisoners to be visited by their families at these institutions if we can legitimately total them together, what right does a man have to be visited by his wife and brothers and sisters?

A He has that right.

Q How often may they visit?

A Daily. Really the only primary restriction is that it does not interfere with the program of the individual or seriously hamper the operation of the institution. I mean if a person visited every day eight hours a day we would probably talk to him asking him to voluntarily reduce this.

Q If his wife came in every day for half an hour, would she be permitted to do that?

A Yes.

Q What rights do these inmates have to be visited by their counsel, how often can their counsel visit?

[179] A As often as is necessary.

Q Are there others who have visitation rights besides the family and attorney?

A Friends.

Q And are friends in the same category as the family? Can they visit as often?

A There would be more restrictions placed on their visiting extensively than immediate family.

Q Do you know what those rules are for example at Terre Haute where you are now and what they were at Lewisburg?

A They are comparable except we have visiting five days per week at Terre Haute where we had seven day visiting at Lewisburg. That is the primary difference.

THE COURT: When anybody starts abusing or taking unfair advantage you cut down and you tend to favor members of the family and lawyers, or religious counsel?

A Yes, sir.

BY MR. CALIFANO:

Q Do you have facilities at Terre Haute and at Lewisburg for visiting rooms?

A Yes, we do have a visiting room.

Q How many people can visit in those rooms, roughly? Take Lewisburg first.

A It would be a guess. I would think probably 75 to 100 total could visit comfortably at Terre Haute.

[180] Q How about Lewisburg?

A I would think it would be approximately the same.

Q Might be a little larger because the population is larger?

A It is not much larger, maybe somewhat larger.

Q 75 to 100 people at any one time?

A Yes.

Q So if they were there for an hour or so you could have three or four times that many in a given day?

A As you describe it, I believe—what did you say?

Q I said 75 to a 100 people at any one time, and if each person were there for an hour say, if 75 people came in at 9:00 o'clock in the morning for an hour to visit, relatives, to visit, another 75 could come to this facility?

A They could but this is not what happens.

THE COURT: You have visiting hours in a point of time during the day.

A That is correct. But ordinarily when a person comes to visit they stay all day. You see different people are visiting different inmates on different days.

BY MR. CALIFANO:

Q I see. Do these visitations create undue burdens on you—family and relatives and friends?

A In what way?

Q I mean is it an undue administrative burden on the [181] prison at Lewisburg or Terre Haute? Would you like to cut it back?

A When we are crowded, yes, when we visit down the hall and this kind of thing.

Q Right, but for the most part to have the appropriate number—75 to 100—which you testified could visit comfortably at Terre Haute, when you have that number on a given day is that an undue administrative burden?

A No. We are staffed for this.

Q You are staffed?

A Yes.

Q Do you have the full 75 to 100 every day?

A No, we do not. Some days we will have more than this and then it becomes somewhat of a problem. Other days we will not have it.

Q Do you have more on a Sunday, is that what happens, a weekend, or—

A —usually we have more on the weekends than during the week, yes.

Q During the week from Monday to Friday you would have less than your full complement of 75 to 100?

A We may have 200 on the weekends and we may have ranging from 25 to 75 during the week.

Q Would it be fair to say that on most week days you have fewer than the full amount you can comfortably handle?

[182] A Except on holidays that would be true, yes.

Q Virtually on all week days that is true?

A Not virtually all week days because there will be periods of heavy visiting which will continue every day the visiting room is open including the week days.

Q On Christmas holidays?

A Just summer, good weather—

THE COURT: —Mr. Califano, I am not going to sit beyond 4:30 and I do want to accommodate the gentleman also from Florida. I have some sympathy with a man who can't get home tomorrow and we are trying to get him out today. I don't want to cut you off but I am wondering, I take it Mr. Alldredge also has to get off today and I hope you have him scheduled and do the best you can to accommodate the U.S. witnesses on these matters.

MR. CALIFANO: I will, Your Honor.



Warden Alldredge, do you ever take away visiting privileges for one prisoner if he does something wrong? Does that happen?

A Yes.

Q What would be a typical example? He hits another prisoner, you might take away his visiting privileges?

A No. It has to be in relation to violation of visiting regulations.

Q If he violates the visiting regulations you would?

A It might adversely effect his visiting privileges, yes.

[183] THE COURT: If he says somebody is his uncle and it turns out to be somebody that has been with him in a caper you might cut him off for a while?

A Yes.

BY MR. CALIFANO:

Q But you would not give him that punishment for anything he did in the prison—fight with prisoners, hit a guard, or steal something—you would still let him have his full visiting privileges?

A That is correct. It might depend on the character of the infraction. If we consider that he represented a security problem we might limit it to a one hour visit under supervision and leading from that up to a full visit in the visiting room.

Q Warden Alldredge, when you were here before and testified about Lewisburg you testified about a peaceful strike there, that a peaceful strike had taken place there and there was an inmate negotiating committee there, is that correct?

A This is different circumstances. I can't recall my exact words but I believe my testimony implied that it was a peaceful work stoppage because I locked everyone up.

Q That may be correct but there was an inmate negotiating committee at Lewisburg?

A The inmates had an inmate negotiating committee, yes.

Q Were any of the people I mentioned earlier—Bobby Baker, Martin Zwieg, Hoffa—any of those people on the negotiating committee?

[184] A No, they were not. I believe Hoffa had been released and the others were at Allen Wood.

Q Were any national figures, famous prisoners on that negotiating committee?

A I am sure there must have been.

Q Can you remember them?

A I can only name one you named earlier and that would be Tino D'Angeles.

Q He was on the negotiating committee?

A No, he was not.

Q No, I am asking you were other national figures like those members of the negotiating committee that the prisoners, that the inmates formed after the strike?

A To the best of my knowledge none were nationally known figures.

Q When prisoners come to Lewisburg or Terre Haute do they go through a screening process upon arrival?

A Yes, they do.

Q Could you describe that?

A When a prisoner is received from the U.S. Marshal he is escorted to the—

THE COURT: —what is the relevance of this?

MR. CALIFANO: Your Honor, it goes to the point of fact that it is my understanding at least that prisoners were given tests of various kinds which enable wardens and others in [185] the facilities to distinguish among them in terms of their security problems and in terms of their other problems—

THE COURT: —Mr. Califano, those all change. The best hopes of men are sometimes disappointed and the worst hopes of men sometimes don't take place, men change in prison.

I really think you gentlemen ought to assume the Court knows a little about—

MR. CALIFANO: —we assume this Court knows a little about it, Your Honor.

THE COURT: I am in constant communication; I visit prisons; some people react quite unexpectedly, don't

they, to your original appraisal of them for worse or for better?

A Yes.

THE COURT: And you change them when that happens?

A Yes.

THE COURT: I mean I don't see where that gets you. I have not in anything that I have done in this case suggested that the Bureau of Prisons cannot bar the press from interviewing particular prisoners. I mean I thought I made that absolutely clear.

MR. CALIFANO: I do realize that, Your Honor, but in the Court of Appeals opinion, the factors it lists on No. 4 is: Whether there may be a valid basis for a ban in the interest of avoiding impairment or good order as to a particular prisoner or prisoners even in the absence of a prior history of unruliness [186] or disruptiveness.

THE COURT: Aren't they talking there again in the "big wheel" context?

MR. CALIFANO: I was just going to continue with 5:

Whether it is unfeasible to pursue a flexible approach to allowance of private personal interviews with appropriate scope for the judgment of responsible prison officials and their consideration of administrative convenience or necessity.

THE COURT: Those matters are the burden of the government, not the burden of the plaintiff. But if you want to pursue that.

I have been expecting testimony, which I haven't heard yet and assume I will hear, because I asked for it at pre-trial with respect to the various categories and classifications of prisoners in different categories, etc. I assume there are competent witnesses coming on those matters. We have had little here. I took that to be more the kind of thing, I tried to suggest by questions about the farm camp, the work camp. In other words there are a group of people because they are not considered serious risks and having high potential and approaching some community release are put there and I therefore

asked questions as to whether this gentleman felt that group should be treated the same way as the more hardened kind of criminals that [187] the judge out in the state of Washington was talking about when he was talking about the prison out there, but I assumed they are talking—they may not be, Mr. Califano, but I assumed the Court of Appeals was talking about general categories. This, as I understand it, this rule even operates to prisoners who are released to work in General Motors plants, they were going home every weekend. This rule still applies. I thought what we were talking about was that kind of category rather than psychological judgments about potentiality of individual prisoners to make false statements to the press. But perhaps not. It seems to me that is a very difficult line of inquiry.

**MR. CALIFANO:** Your Honor, there is some way which a judgment is made as to who goes to a camp virtually upon arrival and who goes to lesser security.

**THE COURT:** That depends in part on the sentence and part on appraisal of the man.

**A** That is correct. His family relationships, how much physical resources he might have, all these things enter into it as well as psychological tests.

**THE COURT:** All right.

**BY MR. CALIFANO:**

**Q** Let me simply state on the basis of all those things, you make judgments as to whether—

**A** —I do not, the classification committee or classification teams make these decisions.

[188] **Q** The classification teams of the Bureau of Prisons makes these kinds of individual decisions about each inmate that comes to the federal institutions?

**A** That is correct.

**THE COURT:** And their guess is sometimes who wrong either way is based on performance in the prison?

**A** They sure do, judge.

**BY MR. CALIFANO:**

**Q** Warden Alldredge, since you have been at Terre Haute—is Terre Haute a maximum security institution?

A At one time it was classed as a medium security institution but now is categorized as a maximum security facility because it does have maximum security facilities.

Q Are there transfers to Terre Haute on a frequent basis from other federal prisons?

A Yes.

Q How often?

A We have several prison buses that are transferring prisoners almost weekly. They are weekly almost.

Q From one maximum security prison to another?

A To various institutions, federal prison camps, from one coast to the other, yes.

THE COURT: Some of the men that come in there are destined to be sent out and they stay there for a while until a place opens up, is that right?

[189] A Yes, judge. We might accept them from one district and we contact the probation officer and later transfer the prisoner, yes, sir.

THE COURT: All right.

BY MR. CALIFANO:

Q Warden Alldredge, do you have a pretty good sense, or did you at Lewisburg after being there awhile, of who the trouble makers were in the prison, who that 5% you talked about at Terre Haute were today?

A I might not personally have that knowledge but my staff would be informed better than I.

Q And they would know those prisoners who are either trouble makers or likely to be trouble makers?

A We constantly try to identify that group, yes.

Q That 5%, they know them?

A For the most part, but not always.

MR. CALIFANO: That is all, Your Honor. Thank you.

#### REDIRECT EXAMINATION

BY MR. KATZ:

Q Warden Alldredge, going back to the publication of the stories which were marked in evidence, after those stories appeared in print and prior to the work stoppage,

would you have admitted press representatives to the institutions?

A Yes, I would have.

[190] Q In accordance with the usual operations policy?

A Yes, sir.

THE COURT: I think he said he did is what the record shows.

BY MR. KATZ:

Q Now, we have had testimony I believe from you before on the subject of what you termed the "big wheel".

Now, the big wheel in your experience, does it necessarily follow a man becomes a big wheel within an institution because of the fact that he was notorious to the general public because of what he was convicted for?

A No, it does not.

Q It is not necessarily true that only people like Bobby Baker and General Turner are capable of becoming big wheels?

A You are correct in your assumption.

Q Do you have an opinion respecting whether or not press attention given to these persons who become big wheels in the institutions can have any effect on their role?

A I think any person who would receive a great deal of attention from the press in an institution would become an important figure in that institution.

Q Not necessarily because he was a famous national figure before that time?

A No.

MR. KATZ: Thank you.

[191] THE COURT: You are excused. You will make your plane.

THE WITNESS: Thank you, judge.

(The witness was excused.)

MR. KATZ: Your Honor, we are endeavoring to see if we can obtain other transportation arrangements for Mr. Wainwright. We would like to start him on the stand.

THE COURT: I will try to accommodate him as best I can. We will see how it goes.

Thereupon,

LOUIE L. WAINWRIGHT

was called as a witness, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q Sir, would you please state your name and residence?

A Louie L. Wainwright, Tallahassee, Florida.

Q What is your occupation?

A I am Director of the Florida Division of Corrections.

Q How long have you been the Director of the Florida Bureau of Corrections?

A I have been in the correctional service for more than 20 years and I have served in the position of director for the past ten years.

Q Prior to your tenure as director what other positions in the correctional system did you hold?

[192] A Warden of institution for five years, and prior to that I was in the correctional service within the institution.

Q All this in the state of Florida?

A Yes, sir.

Q Are you a member of any professional associations dealing with corrections?

A American Correctional Association; National Association of State Correctional Administrators; American Wardens Association.

Q Would you very briefly describe the American Correctional Association?

A It is composed of about 12,000 members in the Correctional Service composing of 19 affiliated organizations such as American Wardens Association, Medical



Association, Correctional Psychologists Association, Correctional Officers Association, Correctional Chaplains Association, and other people related to correctional work.

Q Does the membership of this association include personnel who work for the Federal Bureau of Prisons?

A Yes, it does.

Q Have you ever held office in these associations?

A Yes, in 1966 and '67 I was president of the National Association of State Correctional Administrators and in 1970 and '71 I was president of the American Correctional Association.

Q Would you please describe for His Honor the penitentiary system which you run in Florida, how many institutions do you have?

[193] A We have 9 major institutions; fourteen 50-70 man institutions; and 11 work release centers. Total of 10,297 inmates and 2600 employees.

Q What is the typical range of offenses for which persons are convicted who reside at your institutions?

A All convicted felons, ranging from murder, armed robbery, rape, aggravated assault, on down to forgery.

Q What proportion of your prison population roughly would you consider a disciplinary problem?

A About 10%.

Q In what way are they problems for the administration?

A Of course most of this group is concentrated in two major institutions of the Florida State Prisons. There the more serious crimes, management problems, aggressive behavior, those convicted of murder, serious escape risks, homosexuals, behavior problems of all nature and of course as you know society has become a lot more tolerant and permissible and that carries over into the institution which causes problems for management.

Q How does that cause problems for management?

THE COURT: I would like to know what he is talking about first.

When he says society has become more permissible, what are you talking about? I would like to know what he means by that.

A I mean there are more people committing offenses and more tolerance to those offenses in society.

[194] THE COURT: You mean you don't get them in prison because people are tolerant of them?

A The confrontations occurring on the outside that didn't occur years ago, people come to us with backgrounds in taking part in demonstrations and marches and confrontations with police, etc., which makes it more difficult problems—

THE COURT: —I see, more activists sort of coming into the prison system?

A Yes, sir.

THE COURT: I understand.

BY MR. KATZ:

Q Has there been much of a change in the proportion of disciplinary problems in the system in recent years?

A Yes, there has been considerable change.

Q In which direction is the change?

A More problems, more difficult.

Q Why is this?

A Well, as you know in most states, in particular our state, there has been stepped up activity in the area of probation, in the area of parole and work release centers which skims off what was normally referred to as the better class of inmates leaving the most difficult management problems in the system.

Q Do you have a policy with respect to contact between the news media and inmates of your penal institutions?

[195] A Yes, sir. Our policy is we do not permit interviews with the press—between the press and inmates.

Q Does this policy apply uniformly in all of the institutions of your control?

A Yes, it does.

Q What are your general reasons for prohibiting inmate and news media interviews?

A Of course we haven't experienced contact with too many reporters as was described here by Dr. Fischer this morning and we feel that we want the press and the public to know what is going on in the institutions, we

want to open our institutions to public scrutiny as much as possible. We do that by permitting the press to tour any program or any phase of the operation in the institution; they may on those tours discuss any program aspects with the inmates involved and we feel that this is sufficient exposure to allow the public to know what we are doing and what we are not doing within the system.

Q Are you familiar with the policy of the Federal Bureau of Prisons in this regard which is at issue in this case?

A Yes, I am.

Q It is to the policy you described regarding your institutions substantially similar to the federal system?

A Very similar.

Q You heard the term "big wheel" or term similar to it [196] used in this courtroom today. Do you have on the basis of your experience an opinion respecting whether certain inmates tend to become big wheels?

A Certainly I think the big wheel or leader, or inmate leader as termed is certainly very evident in our prison operations.

Q Do you define the term big wheel as what, sir?

A It is an inmate who is able to gain status among the other inmates either from his publicity and type of crime before he came to the institution or his activity after he gets into the institution in which he gains the respect or at least the following of many of the other inmates within the institution.

Q Is this a common phenomenon?

A Yes, I think there is no question that any time you have people together there are going to be leaders among those people whether in prison or out of prison.

Q Do you have inmates in your system who are persons of considerable national notoriety? Notoriety within the state of Florida?

A Yes, we have some.

Q Tell us who they are?

A Dr. Copolino, Joe Fields, Murph the Surf.

Q Dr. Carl Copolino?

A Right.

THE COURT: You are not saying they are big wheels? They are prominent—are they leaders in your prison system? [197] Is that doctor a leader in your system?

A He has a great deal of following, yes, sir.

THE COURT: So you say he is one of the leaders?

A Yes. There are people in the power structure, judge, who have positive support and those who have negative support.

THE COURT: That isn't what I was asking about. I was asking is he one of the leaders?

A Yes.

BY MR. KATZ:

Q Mr. Wainright, did there come a time recently when one of your institutions was visited by Mr. Les Whitten (phonetic spelling)?

A Yes, sir.

Q What institution was that?

A Florida State Prison.

Q Who is Mr. Whitten?

A He is a reporter for the Jack Anderson column.

Q When was it Mr. Whitten visited Florida State Penitentiary?

A September 16, 17, 18 of 1970.

Q Did you authorize Mr. Whitten's visit?

A I had several discussions with my immediate boss, then secretary, Dr. Bachs in which I objected to the visit.

Q Dr. Bachs is who now?

A Dr. Bachs was at that time my immediate superior. He was secretary of the Department of Health and Rehabilitation.

[198] Q What did Mr. Whitten want to do in the Florida State Penitentiary?

A He wanted to tour the institution non-supervised, talk to any inmate or staff that he wanted with the assistance of an inmate as his tour guide.

Q An inmate?

A An ex-inmate.

Q Was this in accordance with your policy?

A Definitely not.

Q Was Mr. Whitten permitted eventually to have these interviews?

A Eventually, yes.

Q This was an exception to your policy?

A Yes.

Q Made by you?

A Made by Dr. Bachs.

Q How long did Mr. Whitten and his escort remain at Florida State Penitentiary?

THE COURT: Three days is what he said.

Let's go on with some new information about it.

BY MR. KATZ:

Q Did there later appear articles in newspapers based on these interviews?

A Yes, the articles started appearing on October 1st, 1970.

[199] THE COURT: Was that in the column or was it—

A —his columns, judge, published in about 25 papers in our state.

THE COURT: Yes, but it was in the column?

A Yes.

MR. KATZ: I would like to have these marked for Identification as Government's Exhibit 5, and there are 10 of these.

THE COURT: Why not make them A to J. Anderson's column?

MR. KATZ: Yes, sir. Your Honor, we would like to move to have xerox copies inserted in the record.

THE COURT: Certainly. I would like to read the original. And they will be received in evidence. I will read them.

MR. KATZ: I may explain this, Your Honor. We have two sets, one dated October 1st, one dated October 2nd. In each case the ten articles are identical, the only difference being they each appeared in different Florida newspapers.

THE COURT: Surely.

A Different headlines also.

THE COURT: Different headlines and different priorities to his column.

MR. KATZ: And different paragraphs.

THE COURT: That is because newspapers can cut something out if they want to.

[200] When will you know whether you have this gentleman on an airplane or not?

COUNSEL: Your Honor, at this point we can't get him on any plane except 8:35. I can make one more call if you feel we can't finish up.

THE COURT: Is that 8:35 in the morning?

COUNSEL: In the morning out of Baltimore.

THE COURT: You say he is on that?

COUNSEL: That is the reservation he has now.

THE COURT: That means we have to finish up tonight.

THE DEPUTY CLERK: Government Exhibit 5-A thru J received into evidence.

(Government Exhibit Nos. 5-A thru J marked for Identification and received in Evidence.)

MR. KATZ: I take it Your Honor admitted these into evidence?

THE COURT: Yes.

MR. KATZ: Has Your Honor received a copy of it?

THE COURT: No, I haven't. You fellows have been shuffling papers. You go on with your examination while I am reading them.

MR. KATZ: I now offer into evidence Government Exhibits 6-A thru J. This is October 2nd.

THE COURT: Received.

THE DEPUTY CLERK: Government Exhibits 6-A thru J marked for Identification and received in Evidence.

[201] (Government Exhibits No. 6-A thru J marked for Identification and received in Evidence.)

BY MR. KATZ:

Q Mr. Wainright, you have seen and read the two articles over the by-line of Jack Anderson which have just been admitted into evidence?

A Yes, sir.

**Q** Do the newspapers in which these various articles appear receive circulation in the Florida State Penitentiary?

**A** Several of them receive circulation in the institution and of course copies of others may be mailed in by inmate families.

**Q** You have an opinion overall respecting the truth or falsity of the allegations contained in the articles?

**THE COURT:** Oh, come, come!

**MR. KATZ:** Your Honor asked Warden Alldredge the same question with respect to—

**THE COURT:** —I know, but these were quite different articles in form, they deal with a series of specific problems in the prison system that were noted. The other was a broadside type of charge not by a newspaper reporter. These articles detail a group of very familiar difficulties in the prisons. They detail the type of difficulties that have been encountered in the prison system of Arkansas, the prison system of several southern states, in Maryland, in Virginia, and in the District of Columbia. There is nothing particularly unique about this [202] and I suppose then that what is important to this witness and to you is to throw some light on whether there are aspects of this that are true, aspects that are false or whether the whole thing is false, or the whole thing is true. But I think it needs a little more differentiation than your general question. These are common prison problems that resulted in the federal court shutting up the prison system in states because of the lack of adequate hospitals and prison facilities and those conditions have been revealed by the press.

Did you issue a reply to this, Mr. Wainright?

**A** Dr. Bachs did.

**THE COURT:** In what respect? That is is erroneous?

**A** Only on the first article.

**BY MR. KATZ:**

**Q** I show you a copy of the two articles, Mr. Wainright. Will you look at those. Would you tell us which of the assertions made are in your judgment true and which are false?



A Of course as the judge has said, some of the points in here such as overcrowding and lack of adequate hospital facilities are accurate, but the cases that he pointed out were not verified. They are completely inaccurate. The allegation that we attempted to check a corpse into the hospital was certainly a misrepresentation of fact. The total articles, the general theme of the articles are completely false.

[203] Q After the publication of these articles did there come to your attention that there was any reaction to them among the inmate population at that penitentiary?

A There immediately began to be reaction from the inmates within the system, within the institution.

Q What form did that reaction take?

A Of course as a result of this reporter being there and these two articles and thereafter state reporters begun touring the institution and writing their own stories.

Q By state reporters you mean what?

A Local newspaper reporters from within the state of Florida, and of course each one of them editorializing their own views and their own opinions as to what they saw, many of them disagreeing with particular points in this column, but also exaggerating other points. We had numerous newspaper reporters in during the next several weeks, conditions in the institution became very serious and we had additional disciplinary problems, we had more problems supervising the inmates, had more fights between inmates, had more medical complaints; we had two of our medical staff resign and leave the institution. We had a complete reversal of the trends that we had been going for the last several months since appointing a new dynamic superintendent a year and a half prior to this, and it finally resulted in—

Q —if I may interrupt you for just a second. Were these [204] local reporters permitted to have private interviews with the inmates?

A They were.

Q Is this too exception to the policy?

A Yes.

Q How long did this go on?

A Until the situation got to be complete chaos and Dr. Bachs decided maybe we ought to revert back to the policy we had through the years.

Q And for how long a period did this continue?

A Some three to four weeks.

Q You were describing the effect of the stories, etc., at the penitentiary. What happened after that?

A As I said, we continued to have problems. We were tremendously overcrowded, the repetition of the articles printed of course kept the inmates stirred up considerably more than they would have been otherwise. The numerous investigations involved as a result of the alleged investigation of course caused turmoil in the institution and the morale of the inmates was down, finally resulted in a serious disturbance at the institution.

Q When did that occur?

A February 14, 1971, a few months later.

Q Would you describe that disturbance to His Honor?

A At this institution we have two complete separate [205] institutions. One is a 1200 man maximum security institution and the other at that time had 2400 inmates in it with just a little less than maximum security. There was a work stoppage in the maximum institution here the day we were attempting to work the problems out there. The other institution the inmates walked off their jobs and refused to go to their cells. They were finally allowed to go to the recreation yard. We attempted to talk with them there which was unsuccessful and later resulted in late evening confrontations and the use of gunfire to bring them under control and put them back in their cells.

(Change of Reporters)

[206] BY MR. KATZ:

Q How many people were injured as a result of this?

A I believe there were about forty-two.

Q Was there property damage?

A About \$10,000 property damage.

THE COURT: Has the Legislature done anything about it?

**THE WITNESS:** Since that time?

**THE COURT:** Yes. I mean, Anderson says it isn't your staff's fault. It is the fact that the taxpayers aren't putting up enough money for a decent prison system.

I was just wondering whether there was any reaction from the state authorities.

**THE WITNESS:** They have taken some steps.

**THE COURT:** Gotten more money?

**THE WITNESS:** Yes, sir.

**BY MR. KATZ:**

**Q** Mr. Wainwright—

**THE COURT:** That has been the theme of the testimony right along.

**BY MR. KATZ:**

**Q** Mr. Wainwright, do you have an opinion, based on your position as Director of Corrections, and based on your experience, and based on knowledge you have of the events which you have described, as to whether or not there was a causal connection [207] between the interviews which took place and were recorded in the Jack Anderson columns, which have been introduced in evidence in this case, and the other interviews which occurred on the one hand, and the major disturbance which you have just described?

**A** Well, as I mentioned earlier, we had a little over a year prior to that appointed a new dynamic superintendent to head, to manage that institution, and to overcome some of the problems that we recognized we had there.

It was on the way to working out some of those problems. We had received legislative recognition, some legislative committees had been there. In fact, the day the disturbance occurred, we were meeting with the Senate Legislative Committee to discuss many of the problems existing at that institution.

So as a result of the Anderson column and the subsequent publicity and reporters and repetition of reports, at that point the situation began to turn the other way, began to deteriorate.

We had serious problems, as I said, and disturbance. We had more disciplinary reports; we had more reaction by the inmates; we had more confrontation with the officers; and it did not cease until the final disturbance on February 14.

So I think the only logical explanation that can be drawn is that it resulted as an effect of the publicity that began with Jack Anderson's column, and followed through with [208] the other reports.

Q How significant was the February disturbance?

A It was extremely significant. There were several hundred people involved. Of course, it resulted in many investigations, both state and Federal; and the institution, of course, was in considerable chaos for many weeks thereafter, under very close security and under tight management operation.

Q Are you familiar with the proposed guidelines of the Association of State Correctional Administrators with respect to inmate interviews?

A Yes, I am.

Q And what do you understand that policy to be?

A That each case should be handled on an individual basis.

Q Do you concur with that?

A No, I don't.

Q Would you state your reasons for not concurring?

A I think that we have to develop uniform policy in the institution, in the Division, and when you start making exceptions to a policy such as that, that there is not any place to stop.

I think somewhere along the line the press has to understand that there are management problems in the institution that they can't solve. They are not instant experts. And that interfering beyond the point of being able to review programs, [209] to be able to discuss problems of programs, or lack of programs, to physically see it, themselves, and also to be able to talk to inmates involved in those programs, seems to me like that is sufficient. They don't have the authority to do anything beyond that. They can't legislate. They can't take a man to court. They can't prefer charges against people who

are not acting properly. It seems to me like that is the responsibility of the courts.

Q Are you familiar with the structure of the Federal prisons and the institutions? Are you familiar with the institutions which make up the Federal Bureau of Prisons?

A Yes, I am.

Q On what basis do you have that familiarity?

A Well, of course, I have talked with wardens from the institutions on many occasions at different meetings I have attended. We mentioned earlier I actually spent two weeks at the institution in Atlanta; and I have visited two or three other of the Federal institutions; and I am quite familiar with the one in Tallahassee.

Q So you feel, based on your knowledge of the Federal prison system, and based on your experience and expertise and knowledge of corrections, that a discretionary policy, such as that of the Association of State Correctional Administrators, is not appropriate in such a system?

A I think it would be quite inappropriate for the [210] Federal system.

Q Why do you say that?

A Because of the vast number of institutions and, again, I think it needs to be a uniform policy that can be followed throughout.

MR. KATZ: Your witness.

## CROSS EXAMINATION

BY MR. CALIFANO:

Q Director Wainwright, near the end of your testimony you said that you disagreed with the Association recommendation that press interviews should be handled on an individual basis, is that correct?

A That is correct.

Q Do you recall writing me a letter on October 3, 1972, in response to a letter related to this case?

A No, I don't.

MR. CALIFANO: I only have one copy.

THE COURT: Plaintiffs' 11, is that it? You can mark it.

THE CLERK: Plaintiffs' Exhibit No. 11 marked for identification.

(Whereupon letter dated 10/3/72 from Mr. Wainwright to Mr. Califano was marked Plaintiffs' Exhibit No. 11, for identification.)

MR. KATZ: May we have a copy of that, Mr. Califano?

MR. CALIFANO: I don't have any more.

[211] MR. KATZ: May I read it first?

MR. CALIFANO: Yes.

BY MR. CALIFANO:

Q Director Wainwright, I will read the first paragraph of that letter:

"Dear Mr. Califano:

"It is against our policy to allow press interviews with individual inmates except under unusual situations. If such visits were routinely approved, the administrative and custodial burdens would over extend our already limited staff. At present each request is individually processed by the institutional superintendent and final approval is granted from the central office based upon staff capabilities and the nature of the request."

And this letter is dated October 3, 1972.

Now, could you explain the difference between—

THE COURT: You had better ask him whether he wrote that letter.

Did you write that letter?

THE WITNESS: It looks like my signature.

THE COURT: I assumed from the testimony that somebody else came along and wrote that letter and signed your name to it. Is that right? Is that what happened? That is [212] what happens to all busy officials.

BY MR. CALIFANO:

Q Is that your signature, Director Wainwright?

A It is my signature.

Q I will give you the original, if you like.

A Yes.

THE COURT: Did you sign it or did somebody sign your name?

THE WITNESS: I am not sure, Judge.

THE COURT: All right.

THE WITNESS: I might comment, if I may.

At the time back in October, we were reviewing these policies with the superintendents. We have not adopted the State Association of Prison Administrators policy, the policy guidelines in any of the seven or eight areas.

At the time this letter was written, it was during the time that those policies were under review; and it is very probable that the staff felt at that time we were going to adopt the policies. But we have since met with the Attorney General, and others, and have not adopted the policies of the Association.

BY MR. CALIFANO:

Q It doesn't say you were going to adopt that policy, Director Wainwright. It says, it is your policy.

A Well, I can give you one exception that we have made, [213] for instance. We had a lady come to us that was fifty years old and was illiterate. We enrolled her in school; she graduated from high school, got a GED diploma, bought herself a graduation ring. I happened to mention it to a reporter one day and he wanted to interview her. I granted that interview.

I guess I did that on an individual basis. But generally speaking, we do not permit interviews with individual inmates.

Q Do your superintendents have authority to grant interviews?

A No, sir.

Q May I just get the signature point cleared up. You said that looks a lot like your signature.

A I will accept responsibility for the signature.

Q You mentioned that there was an investigation and some kind of a report from an investigation after the



stories were written, and you had disturbances in the Florida prison. You called it an alleged investigation.

A Yes, sir.

Q What investigation was that?

A The Department of Law Enforcement checked on a couple of the items. Dr. Bax, personally, checked on some of them.

Q Did they investigate the prison system or just investigate whether each item in these stories was correct or incorrect?

[214] A They reviewed the allegations in the stories.

Q Are any of the prisons under your jurisdiction and control overcrowded?

A All of them are.

Q All of them are.

Are some of the under-staffed, as well, as far as guards are concerned?

A Yes, sir.

Q Are they under-staffed as far as medical treatment is concerned, doctors?

A Yes, sir.

Q Are they under-staffed as far as training programs are concerned, educational programs?

A Yes.

Q Do you have racial problems in the prisons under your control, racial tensions?

A We have racial tensions, yes.

Q What is the racial mix of those prisons, do you know, roughly?

A About fifty-two per cent black.

Q Have you had incidents in those prisons, stabbings, homosexual incidents, prior to the time the stories were written?

A We have had some instances since the prisons have been operating, yes, sir; but we had a stepped-up number of [215] them after the stories.

Q Do you think that these factors might have contributed to inmate dissatisfaction?

A Certainly they contribute to inmate dissatisfaction.

Q Do you think, Director Wainwright, that the prison officials like you, short on guards, short on medical treat-

ment, short on educational and training programs, overcrowded, racial tensions, are just sitting on bombs in our society, sitting in very tough situations?

A No question about it, yes.

Q And they could explode at any time?

A (Witness nods assent.)

Q Whether or not the press writes a newspaper story?

A But they will explode a lot quicker if they are agitated by the press.

Q If they are agitated by the press. Does the press agitation, as you describe it, come when the reporter goes to the prison or—I think you said it was the publication of the Anderson column that precipitated the problem.

Did you have a problem before the column was printed?

A Well—

Q Of disturbances?

A Are you asking me if Mr. Whitten had gone to the institution and left without publishing a paper that there would have been a problem?

[216] Q Right.

A I am assuming it would be much less of a problem if that had occurred.

Q Well, did you have disturbances between the time Mr. Whitten visited the prison and the time prior to the publication of the Anderson column?

A We had considerable apprehension and considerable reaction.

Q From the prisoners?

A Right, and from the staff.

Q The staff was apprehensive?

A Both.

Q I don't want to spend a lot of time, but you made a kind of general assertion that these articles are false, and there are a whole host of different kinds of facts in these articles, many relating to matters that have to do with hospitals outside the jurisdiction of your Bureau of Prisons and records that Mr. Whitten found there.

Are you saying that every fact stated in these articles is false?

THE COURT: No, he isn't saying that. He has said that—

BY MR. CALIFANO:

Q What precise facts are false, Director?

Would you like to look at the article?

[217] A Well—

THE COURT: I don't want to try the newspaper articles. As I understand what this gentleman is saying, it is that some of the general conditions referred to in there are in various degrees true but that some of the specific complaints and incidents by individuals in there are false.

Isn't that what you are saying?

THE WITNESS: Yes.

THE COURT: He has been very frank in saying that this like many prisons has got problems but that he feels that some of these individuals who talked to Whitten, if they did, exaggerated and gave a false indication of what their problem was.

THE WITNESS: Yes, sir.

THE COURT: I gather that is what he is saying.

It doesn't really bring us forward to try out whether somebody really had a more serious or less serious leg wound or something else. That won't get us anywhere because there isn't any notion in this case that what newspapers write is true, Mr. Califano. I haven't approached it from the point that what newspaper writers are going to say is necessarily true.

BY MR. CALIFANO:

Q Director Wainwright, you said for three to four weeks you had an open press policy.

[218] A Yes, sir.

THE COURT: He had one imposed on him by his boss.

BY MR. CALIFANO:

Q You had one imposed on you by your boss.

A That is correct.

THE COURT: Then his boss took it back.

BY MR. CALIFANO:

Q Did you have individual, private, confidential interviews during that three or four weeks with reporters?

A They were allowed to interview prisoners in the presence of staff and in some cases, of course, without the presence of staff.

Q Do you have a sense of the number of interviews that took place in that period of four weeks?

A I would say some eighteen, twenty.

Q And that was a period of turmoil as a result of the Anderson article?

A What?

Q You said there was turmoil in the prison as a result of the Anderson article.

A I am saying it started with the Anderson article and it kept going with each week that another reporter would come in or a half dozen reporters would come in. The apprehension and turmoil continued to build, tensions began to build, and so forth, yes.

[219] Q The Anderson article appeared on October 1, as I have it, at least, and October 2.

A Yes.

Q I thought you said sometime in February—what was the date of the disturbance?

A February 14.

Q February 14. When did you open it up to the press, after January 1 or on October 3? You said it was a three-to-four-week period.

A Right after the October 1st and 2nd articles came out.

Q After three or four weeks, you closed it down; your boss changed his mind and you closed it down?

A That is right.

Q From November 1st on, you finally, in your quite candid terms, got straightened out and you closed the press out?

A From individual interviews.

Q From individual interviews.

A Yes.

THE COURT: And then there were riots.

THE WITNESS: Yes, sir.

BY MR. CALIFANO:

Q Two and a half months later. Yes?

A Yes. It takes a while for those things to build.

THE COURT: Now, Mr. Califano, it is five o'clock. Apart from the Court's own stamina, I have to take into account [220] that the personnel have been working on daily copy.

I don't want to inconvenience this gentleman unless I have to.

THE WITNESS: I appreciate that, Your Honor.

THE COURT: On the other hand, we have been sitting continuously since nine-thirty this morning. It is now five.

Perhaps you ought to take a moment and go over your notes and see how much more you want to do with Mr. Wainwright.

MR. CALIFANO: I think that is enough.

THE COURT: I appreciate your tolerance with the Court's position but I really think we have to shut down about now.

I have sat later in murder and other particular cases, but I think today we have been running pretty hard.

MR. CALIFANO: Thank you.

THE COURT: Mr. Wainwright has been a very candid and direct witness on these matters and helped us move along.

Mr. Katz, do you have anything further that you wish from him?

MR. KATZ: I have one further question which I don't believe I covered previously.

THE COURT: Very well.

### REDIRECT EXAMINATION

BY MR. KATZ:

Q Mr. Wainwright, do you believe, based on your expertise [221] and experience, that press coverage, press attention to inmates tends to either make them Big Wheels or having been Big Wheels tends to further their activities along this line?

A I think individual interviews tend to give them more status and make them, put them in the category of a Big Wheel, yes.

MR. KATZ: Thank you, sir.

### RE CROSS EXAMINATION

BY MR. CALIFANO:

Q Director, I am sorry. I didn't realize the Government was going to do that to me.

How many inmates within your jurisdiction and control became Big Wheels as a result of press interviews during that three-to-four-week period, and would you identify them, please, if you can? That were not Big Wheels before.

A Well, I think that I can name Cleo Orange, for instance. That is the only one I can name right off that emerged as a result of the interviews. But my point is—

Q How many times was he interviewed?

A I don't have any idea. I wasn't there.

Q You weren't there?

A No.

Q You mean you kept no record of how often people were interviewed?

A I assume the superintendent of the institution did but [222] I am not at the institution.

Q But that is the only example that you can recall at this time?

A That is the only example I can recall.

Q O.K., thank you.

THE COURT: All right, gentlemen, we are closed.

MR. CALIFANO: Your Honor, I forgot to offer the letter in evidence.

THE COURT: Yes.

(Whereupon Plaintiffs' Exhibit No. 11 was received in evidence.)

THE COURT: We have plenty time for housekeeping. We will start up at nine-thirty tomorrow morning. How many more witnesses do you have, Mr. Katz?

MR. KATZ: Your Honor, we have just one more, I believe.

THE COURT: Is he going to be on the statistical aspects of this case?

MR. KATZ: We had planned to offer that by way of documentary evidence.

THE COURT: That may be satisfactory. I have no problem with that form.

MR. KATZ: This is going to be a gentleman from Iowa.

THE COURT: And then you will have how many more?

MR. CALIFANO: Director Carlson.

THE COURT: What order would you want to go in?

[223] MR. CALIFANO: And some documentary evidence.

THE COURT: What order would the parties like to go in? I take it you want to take the man from out of town first?

MR. CALIFANO: That is what we thought, since he was subpoenaed.

THE COURT: We will take him tomorrow at nine-thirty. I have two brief arraignments. They won't take any time. I will not be more than five minutes late.

MR. CALIFANO: Then we have a lot of documentary evidence.

THE COURT: That we can do after these gentlemen get home to families and homes for Thanksgiving. Those of us who live here can fiddle around with documents.

So we will take the man from Iowa at nine-thirty tomorrow morning and follow that with Mr. Carlson.

MR. KATZ: Fine.

(Whereupon at 5:05 p.m., the trial was recessed, pursuant to reconvening at 9:30 a.m., November 22, 1972.)



[223-A]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

WASHINGTON POST, ET AL., PLAINTIFFS

v.

RICHARD KLEINDIENST, ET AL., DEFENDANTS

STIPULATION

Plaintiffs and defendants, by their undersigned counsel, hereby stipulate that the following corrections be made in the trial transcript for November 21, 1972:

p. 2, line 21	for "Floyd" read "Louie"
p. 79, line 6	for "There" read "They"
p. 79, line 10	for "can" read "can't"
p. 80, line 2	for "was a" read "was not a"
p. 90, lines 23, 24	for "cantino" read "canteen"
p. 99, line 2	for "giving" read "given"
p. 99, line 9	for "furlow" read "furlough"
p. 102, line 13	for "DiSilva" read "DiSalvo"
p. 123, line 21	for "pinned" read "peaned"
p. 139, line 11	for "responsible" read "irresponsible"
p. 191, lines 10, 16	for "Floyd" read "Louie"
p. 196, line 22	for "Paul" read "Carl"
p. 197, line 11	for "Rugs" read "Leg"
p. 288, line 2	delete "no"
p. 288, line 13	for "to" read "too"
p. 293, line 19	delete "no"

An additional copy of this Stipulation is attached for insertion after the cover page of the trial transcript.

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**RICHARD M. COOPER**  
**Attorney for Plaintiff**

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**[Illegible]**  
**Assistant United States**  
**Attorney**  
**Attorney for Defendants**

**November 29, 1972**

[224]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No. 467-72**

**THE WASHINGTON POST COMPANY**

**and**

**BEN H. BAGDIKIAN, PLAINTIFFS**

**v.**

**RICHARD G. KLEINDIENST, Attorney General of the  
United States**

**and**

**NORMAN A. CARLSON, Director,  
United States Bureau of Prisons, DEFENDANTS**

**Washintgon, D. C.  
November 22, 1972**

**The above-entitled cause came on for further hearing  
before the HONORABLE GERHARD A. GESELL,  
United States District Judge, at 9:50 a.m.**

**APPEARANCES:**

**(As heretofore noted.)**

[225]

## CONTENTS

Witnesses	Direct	Cross	Redirect	Recross
-----------	--------	-------	----------	---------

*Defendants':*

LOU V. BREWER

By Mr. Katz	226			
-------------	-----	--	--	--

By Mr. Califano		242		
-----------------	--	-----	--	--

*Plaintiffs':*

NORMAN A. CARLSON

By Mr. Califano	245			
-----------------	-----	--	--	--

By Mr. Katz		250		
-------------	--	-----	--	--

## EXHIBITS

*Government's:*

	For Identification	In Evidence
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No. 7 Policy and Procedure Guidelines, Bureau of Adult Correction Services, State of Iowa.	230	241
--------------------------------------------------------------------------------------------	-----	-----

No. 8 Burlington Hawk-Eye article.	234	241
------------------------------------	-----	-----

No. 9 Des Moines Register article.	234	241
------------------------------------	-----	-----

No. 10 Volume entitled Federal Bureau of Prisons Statistical Report, Fiscal Years 1969 and '70.		243
-------------------------------------------------------------------------------------------------	--	-----

No. 11 Pamphlet entitled United States Department of Justice, Federal Bureau of Prisons, Biennial Report for 1970-71.		244
-----------------------------------------------------------------------------------------------------------------------	--	-----

No. 12 Chart entitled Statistical Data Regarding the Number of Federal Prisoners in Bureau of Prison' Institutions in the Following Categories as of October 23, 1972.		244
------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	-----

No. 13 Subsequent Carlson affidavit.	248	249
--------------------------------------	-----	-----

[225-A]

*Plaintiffs':*

	For Identification	In Evidence
--	-----------------------	----------------

No. 12 Director's letter of January 13, 1972 and attached Policy Statement.	245	
-----------------------------------------------------------------------------	-----	--

No. 13 Affidavit of Mr. Carlson dated November 28, 1971.	246	249
----------------------------------------------------------	-----	-----

## [225-B]

Plaintiffs Exhibits	For Ident.	In Evidence	Withdrawn
14		276	
15		277	
17-A through D		279	
18-A and B		280	
19-A and B		280	
20-A		281	
20-B		284	
21-A		284	
30-B		291	
30-D			292
31-A		292	
31-B			292
32-A, 33, 34-A and B		293	
35-A, B, C		294	
54-A through D		296	
54-E			296
55-A			297
55-B		297	
57-A and B		298	
58-A, B, C		298	
58-E		298	
59, 60		299	
64		302	
65		303	

[226]

## PROCEEDINGS

THE COURT: All right, we will take the next witness.

MR. CALIFANO: Your Honor, just to clean up the admission of Plaintiffs' Exhibit 11, the letter from Director Wainwright to me.

THE COURT: That may be received at this time.

That is already in evidence at Page 222 of the transcript. I thought I had admitted it.

MR. KATZ: The Government calls Mr. Brewer.

WHEREUPON—

## LOU V. BREWER

was called as a witness by the Defendants, and having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. KATZ:

Q Sir, would you state your full name and present address, please?

A Lou V. Brewer; I reside on the grounds of the Iowa State Penitentiary in Fort Madison, Iowa.

Q What is your occupation?

A Warden of the Iowa State Penitentiary.

Q How long have you been Warden of the Iowa State Penitentiary?

A Four years.

Q Would you describe to the Court very briefly your [227] previous experience in the correctional field prior to assuming that position?

A I began working corrections in 1956, as a classification interviewer at the Tennessee State Penitentiary, and remained with that system until 1961. The last year that I was there, I was Director of Classification. In 1961, I became a counselor at the Iowa State Penitentiary in Fort Madison for two years. Two years later, I became the Superintendent of a forestry honor camp in con-

junction with the Iowa Men's Reformatory; and two years later became Superintendent of the Release Center in Newton, Iowa; until I assumed the present position.

Q Would you describe very briefly the nature of the Iowa State Penitentiary, of which you are the Warden?

A The Iowa State Penitentiary houses maximum security needs of the system. We have approximately 600 inmates, the full range of major offenses, dealing primarily with recidivistic and long-term individuals.

Q Do you have many individuals incarcerated in that institution whom you consider to be disciplinary problems?

A Yes. Because of the structure of our system and the fact that we transfer behavioral problems and security risks from other institutions, approximately 20 to 25 per cent of our present population are behavioral, management problems.

Q What types of problems do they present?

A Assaultive behavior, acting out in an impulsive and [228] rebellious manner.

Q Do you have inmates who are considered to have exercised a leadership role over other inmates?

A Yes, we have inmates who within the prison community become leaders because of their more activist nature and their ability to manipulate other people to follow their will.

Q Could you give us an idea how many such individuals you have?

A Well, within that 20 to 25 per cent that I said were problem behavior, management cases, probably one-fourth of that number are of the leadership type.

Q All right. Now, Mr. Brewer, did anything unusual occur at the Iowa State Penitentiary in November of 1971?

A Following several days of unrest and continuing rumors and feed-back from staff, we did order a general lock-up on November 29, 1971, feeling certain that the information on which we acted was such that had we not done so, there was likely to occur a disturbance the next day.

Q What is a general lock-up?



A We left all men in the institution in their cells the next morning and began shifting further information to try to determine the nature, the cause, the grievances that were motivating the tension, and as much as possible, who was responsible. Within two days, we had been able to identify those people primarily responsible and identified the grievances. [229] We set about trying to redress those grievances that appeared to have merit; and two days later started returning the majority of the general population to routine, although we continued some people in the lock-up past that date.

Q Did this matter eventually come to the attention of the press in Iowa?

A Yes, it did.

Q Did you receive any requests from members of the press in Iowa to conduct interviews with any of these persons?

A Yes, a reporter for the Des Moines Register and one for the Burlington Hawk-Eye, each advanced a request to interview those inmates who were in segregated status as a result of the preventive action.

Q Were these requests made to you, sir?

A Initially, they were made to me.

Q Do you, in the State of Iowa, have a policy respecting inmate interviews with the media?

A Yes, we do.

MR. KATZ: I would like to mark this document as Government's Exhibit 7, for identification.

THE DEPUTY CLERK: Government's Exhibit No. 7 marked for identification.

[230 (Whereupon, the Policy and Procedure Guidelines, Bureau of Adult Correction Services, State of Iowa, was marked Government's Exhibit No. 7, for identification.)

BY MR. KATZ:

Q Now, Mr. Brewer, I now show you a document which has been marked as Defendants' Exhibit No. 7, for identification, and I ask you if you recognize it?

A Yes, I do.

Q What is that document?

A The Policy and Procedure Guidelines of the Bureau of Adult Correction Services, State of Iowa.

Q Would you briefly summarize for His Honor what the provisions of that policy are with respect to interviews between news media and inmates?

A It encourages press access to the institution and making available of information to the press. It further indicates that interviews in general should be granted and rests the prerogative for granting the interviews with the institution warden or superintendent, but indicates the institution superintendent may decline the interview in consideration of the needs of the inmate, other inmates, or the interests of the institution or the Bureau.

Q All right.

[231] Now, sir, directing your attention again to the requests for interviews following the lock-up, which you previously described, who made these requests to you?

A Well, initially a reporter for the Des Moines Register and, additionally, a reporter for the Burlington Hawk-Eye.

Do you wish their names?

Q Yes.

A The initial request was from James Landsburg, from the Des Moines Register, and Les Peck, from the Burlington Hawk-Eye.

Q Approximately when did you receive these requests?

A Mid to late December.

Q What action did you take on those requests?

A I denied the interviews.

Q On what grounds?

A I felt the institution was still in a state of tension, and that interviewing the inmates could only add stature to those people whom we had in segregated status, as far as their relationship to the other inmate population, and that this could give rise to the heightening of tension and the feelings of the inmates and staff.

Q What happened after you issued your denial, as you stated?

A I was subsequently ordered by the Director of the Bureau of Adult Correction Services, he having advised

me that [232] he had been directed by the Governor's office that we should permit the interviews.

Q And did interviews in fact take place?

A Yes, they did.

Q When did they take place?

A Some time in the first week of January of '72.

Q Who conducted the interviews?

A Mr. Gordon Gamet at that time substituted for Mr. Lansburg, who made the original request for the Des Moines Register; and Mr. Peck, the same reporter who made the request for the Burlington Hawk-Eye, conducted the interviews.

Q Where did they take place?

A We arranged an interview room inside the institution for this purpose.

Q How many inmates were interviewed?

A Six.

Q How were these six inmates selected?

A I initially provided them with a list of those inmates who were in segregated status relative to the November 29 action, and from this list, they scanned our card file and indicated an initial six that they would interview.

After they began the interviews, they detoured from this list, and after interviewing the first inmate, gave us a list different from this of named inmates. Since it was still within the framework of interviewing inmates that we had in [233] segregated status related to this issue, we permitted them to interview those six.

Q And how long did this entire process of interviewing these six individuals go on?

A They were involved with either interviewing the inmates or touring the institution from early afternoon, I think around 1:30 or 2:00, until 8:00 or 9:00 in the evening.

Q The inmates interviewed were at the time in what status?

A They were in administrative segregation.

Q And why were they in administrative segregation?

THE COURT: He has explained they were part of the group that were locked up as a result of the effort

through the general lock-up to determine who the leaders were and hold them. Isn't that what happened?

THE WITNESS: That is correct.

THE COURT: He has been all over that.

MR. KATZ: All right.

BY MR. KATZ:

Q Did there subsequently come a time when stories appeared in newspapers which were based on these interviews?

A Around January 9, I believe, each of the newspapers involved did publish an article reflecting these interviews.

THE COURT: Did they also interview you, Warden?

THE WITNESS: Each of these people had previously [234] interviewed me and subsequently interviewed me.

THE COURT: Yes.

MR. KATZ: I would like this marked as Government's Exhibit 8.

THE DEPUTY CLERK: Defendant Government Exhibit No. 8, marked for identification.

(Whereupon, the Burlington Hawk-Eye article was marked Government's Exhibit No. 8, for identification.)

MR. KATZ: And Government's Exhibit 9, for identification.

THE DEPUTY CLERK: Defendant Government Exhibit No. 9, marked for identification.

(Whereupon, the Des Moines Register article was marked Government's Exhibit No. 9, for identification.)

BY MR. KATZ:

Q Mr. Brewer, I am going to show you two newspaper stories which have been marked as Defendants' Exhibits 8 and 9, for identification, and I would like you to examine them and tell us if you recognize them?

A One of these is the article that appeared in the Des Moines Register, to which I alluded earlier; and the

other [235] one is the one that appeared in the Burlington Hawk-Eye on January 9, '72.

Q Those are true copies of the stories to which you referred?

A Yes, they are.

Q Were the newspapers which carried these stories circulated in the Iowa State Penitentiary?

A Yes, they were.

Q Were they read by the inmates?

A Yes, they were.

Q And were there any consequences that flowed from the circulation of these stories in the Iowa State Penitentiary?

A There were primarily two problems that developed.

Q Please tell His Honor about them.

A The inmates who were involved in the interviews, who contradicted our reason for having taken the action, seemed to gain stature with their peers; and much conversation then ensued around the institution, it was a heightening of tension among both inmates and staff, and the schedule on which we thought we could return the institution to normal was prolonged; and because of the state of tension that appeared to be there, we did continue with additional security manpower for another month longer.

The second ramification was that one of the inmates interviewed, though the reporters had agreed with me and said they would indicate to the inmates that their names wouldn't be [236] used, there was sufficient identifying information in terms of age and offense and length of sentence that one inmate who related the condition in approximately the same manner that we had related it, when we took the action, was identified to the general population. He subsequently advised the staff that he had been threatened as a result of this, and felt uncomfortable in returning to the general population, when we offered him an opportunity to do so. We thereby continued him in segregated or locked status for another month and a half longer, because of the fears that he had for his well-being, and numerous contacts from his mother, who was extremely fearful because of the same situation.

**THE COURT:** Mr. Katz, what has this got to do with the case before me? Will you explain what your theory is?

This gentleman has described what happened when a Governor intervened over the judgment of the penitentiary officials, forcing the breaking of a reasonable rule.

Now, what has that got to do with this case?

**MR. KATZ:** Your Honor, Mr. Brewer has testified as a result of and following from an interview which was conducted under the circumstances which Plaintiffs contend they should be conducted in the Federal Bureau of Prisons—

**THE COURT:** I am not interested in what Plaintiffs contend. You know what my opinion says. My opinion would no more require this kind of an interview. My opinion wouldn't [237] require this kind of an interview. I don't, therefore, see what the problem is.

I thought I made absolutely clear in my decision that discretion was going to remain in the wardens to determine some of these matters on an individual basis. Here the warden says, in his judgment, it shouldn't have happened; he got overruled on political or other reasons in Iowa; and he got into some trouble.

There isn't even any indication that these men had sought an interview or in advance had agreed to be interviewed. I have trouble focusing on its relation to the case before me. It is an interesting story and I am glad to have the benefit of it in the record.

**MR. KATZ:** Your Honor, he has testified that the interviewees did achieve enhanced status as a result of the interviews and the published stories as inmate leaders. That is the point we are trying to make.

**THE COURT:** In that sense, I understand that.

**MR. KATZ:** This is basically what we are trying to show with his testimony.

**THE COURT:** I just wanted to be sure that the United States understood what the issue was before me. It has been clouded throughout this proceeding because of the unwillingness of the United States to sit down, as I ordered, and work out a reasonable form of order with the Plaintiffs. It was adamantly [238] refused, al-

though I ordered it. I think, to some extent from the hearings and the kind of testimony you have presented to me, thinking it over last night and thinking about it this morning with this witness, that there has been some failure on the part of the Court's decision to communicate to the United States what I think is involved in the case.

You go ahead. I just wanted to be sure I understood what your position was.

May I ask you to wait a moment? I want to see counsel at the bench here in another matter briefly.

(Whereupon, the proceedings were temporarily suspended.)

THE COURT: Excuse me, Mr. Katz. I am sorry about the interruption. With a holiday coming up, there are always some unexpected matters.

Warden, there is one aspect of this that perhaps I didn't fully understand. Did these men, in each instance, the men that were interviewed, the six men, I believe you said—

THE WITNESS: Right, sir.

THE COURT: —that were interviewed, did they have a choice in the matter?

THE WITNESS: The reporters were asked to solicit the inmates' permission; and our policy also contains a form for this purpose and to provide us with a copy of the form.

THE COURT: So in each instance, they had agreed to being interviewed?

[239] THE WITNESS: After they were called to the interview room, they did agree.

THE COURT: But not in advance?

THE WITNESS: Not in advance.

THE COURT: Were members of the prison administration present at the interviews?

THE WITNESS: We had an officer outside the interview room but we had no one present within the room.

THE COURT: You had no overhearing?

THE WITNESS: No monitoring.

THE COURT: All right, thank you.



BY MR. KATZ:

Q I would like to ask you what other experience you have had under the operation of your policy statement. How many requests have you had for interviews within the last year?

A In the last year, there were approximately a dozen requests.

Q And did you deny any of them?

A I think there were four requests that were denied, this one and three more.

Q Why were the others denied?

A Well, one was denied because it appeared that the reason for the interview was to picture the inmate desired to be interviewed as a hero, as far as the establishment and staff were concerned, because he had given assistance to an officer [240] in a serious situation. It was my feeling that that would create adverse pressure on him within the inmate group; and I denied it.

The other one was a manpower denial, based on the number of people that were desired to be interviewed. I don't recall the other one. I think my assistant denied it.

Q Do you have any opinion, based on your experience, as to whether or not the press attention given to inmates tends to promote any leadership characteristics?

A I think the manipulative individuals who tend to be more verbal about problems within and contrary to the best interests of the institution are seemingly the ones more likely to gain this attention; and when they gain it, they do enhance their stature within the peer group within the community.

Q Do you perceive any difference in this phenomenon when on the one hand the contact with the press is achieved by correspondence and on the other hand if the press comes to the prison and conducts an interview with the individual?

A The correspondence contact is a more generally available avenue to all inmates, whereas it appears to me that the interviews tend to focus on this certain group of inmates.

**THE COURT:** So that if a newspaper got a letter from one of these leaders, or Big Wheels, or whatever you call them, and it was published in full text on the front page of the local paper, and it came back into the prison, that wouldn't have any [241] real effect on the man's stature? It wouldn't influence it at all? It would be only if he had talked to the man?

**THE WITNESS:** We have had that thing to happen and it didn't seem to have any great effect on the general climate of the institution, as did the interview situation.

**THE COURT:** Is it your testimony that every time there is an interview, it has this effect or only sometimes?

**THE WITNESS:** I would have to say that sometimes.

**THE COURT:** So it must depend in part on the man?

**THE WITNESS:** It would depend—

**THE COURT:** On the inmate.

**THE WITNESS:** It would depend in part on the man, the climate in the institution, the situation at the time.

**BY MR. KATZ:**

**Q** When the press comes into the penitentiary to conduct an interview, is the fact that this interview is being conducted readily known to the institution at large?

**A** It becomes almost immediately known.

**MR. KATZ:** Will you indulge me a moment, Your Honor.

At this time, I move Government's Exhibits 7, 8 and 9, for identification, into evidence as Government's Exhibits 7, 8 and 9.

**THE COURT:** They may be received without objection.

(Whereupon, Government's Exhibits Nos. 7, 8 and 9 were received in evidence.)

[242] MR. KATZ: Your witness.

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Is the policy still in effect?

A Yes, it is.

Q Did any of the interviews you granted occur after this incident? Have you granted any interviews since November 1971?

A Yes, there have been interviews granted since that time of a human interest nature.

MR. CALIFANO: I have no further questions.

THE COURT: Thank you very much, Warden. You are going to be able to get back all right for the turkey.

THE WITNESS: I think so.

THE COURT: Good.

(Witness excused.)

THE COURT: Now, you have, then, a witness, Mr. Califano?

First of all, Mr. Katz, do you have any other witnesses?

MR. KATZ: Your Honor, we have no further witnesses.

THE COURT: All right, fine. We are a little confused as to the order of proof because I agreed and Mr. Califano agreed that you could put on your case, your material, in the middle of the Plaintiffs' case. Perhaps if there are documents, [243] we can take care of those later. It might be advantageous to dispose of the testimony first and then we can deal with the housekeeping matters.

MR. KATZ: Your Honor, at this time I have three documents which I would like to offer into evidence, copies of which have been furnished to the Plaintiffs.

THE COURT: Defendants' 10, 11 and 12.

MR. KATZ: Government's Exhibit 10, is a volume entitled Federal Bureau of Prisons Statistical Report, Fiscal Years 1969 and '70.

THE DEPUTY CLERK: Defendant Government's Exhibit 10—

THE COURT: Mark it in evidence.

THE DEPUTY CLERK: —in evidence.

(Whereupon, the volume entitled Federal Bureau of Prisons Statistical Report, Fiscal Years 1969 and '70, was marked Government's Exhibit No. 10 and received in evidence.)

MR. KATZ: Government's Exhibit 11 is a pamphlet entitled, United States Department of Justice, Federal Bureau of Prisons, Biennial Report for 1970-71.

THE COURT: In evidence.

THE DEPUTY CLERK: Marked as Defendant Government's No. 11 in evidence.

[244] (Whereupon, the pamphlet entitled United States Department of Justice, Federal Bureau of Prisons, Biennial Report for 1970-71, was marked Government's Exhibit No. 11 and received in evidence.)

MR. KATZ: Defendants' Exhibit 12, a chart entitled, Statistical Data Regarding the Number of Federal Prisoners in Bureau of Prison Institutions in the Following Categories, as of October 23, 1972.

THE COURT: Is that agreeable to you? I haven't seen that one.

MR. CALIFANO: Yes, Your Honor.

THE COURT: In evidence. I would like to see that, Mr. Clerk, after you record it.

THE DEPUTY CLERK: Marked as Defendant Government's No. 12 in evidence.

(Whereupon, a chart entitled, Statistical Data Regarding the Number of Federal Prisoners in Bureau of Prison Institutions in the Following Categories as of October 23, 1972, was marked Government's Exhibit No. 12 and received in evidence.)

[245] MR. KATZ: I am finished.

MR. CALIFANO: Your Honor, we have only one further witness, Director Carlson, and then we have some depositions and documents to put in.

THE COURT: Let's take care of Mr. Carlson first.

WHEREUPON—

**NORMAN A. CARLSON**

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. CALIFANO:**

**Q** Mr. Carlson, I would like to show you a document—

**MR. CALIFANO:** Would you mark this, please.

**THE DEPUTY CLERK:** Plaintiffs' Exhibit No. 12, marked for identification.

(Whereupon, Director's letter of January 13, 1972 and attached Policy Statement was marked Plaintiffs' Exhibit No. 12, for identification.)

**BY MR. CALIFANO:**

**Q** Mr. Carlson, would you please state your name, address and present occupation for the record?

**A** Norman A. Carlson, 8702 Piccadilly Place, Springfield, Virginia, Director of Federal Bureau of Prisons, Department of [246] Justice.

**Q** Mr. Carlson, I show you Plaintiffs' Exhibit 12, for identification, which you may recall was attached to a motion Plaintiffs filed subsequent to the March 23 hearing. I ask you whether or not that is an accurate copy of the Director's letter of January 13, 1972, and the Policy Statement attached to that Director's letter?

**A** To the best of my knowledge, it is.

**Q** Thank you.

**MR. CALIFANO:** Would you mark this for identification, please.

**THE DEPUTY CLERK:** Plaintiffs' Exhibit No. 13, marked for identification.

(Whereupon, affidavit of Mr. Carlson dated November 28, 1971 was marked Plaintiffs' Exhibit No. 13, for identification.)

MR. CALIFANO: Will you pass that to the Judge.

BY MR. CALIFANO:

Q Mr. Carlson, I show you Plaintiffs' Exhibit No. 13, marked for identification, which is an affidavit, apparently signed by you, in a case in Seattle, dated the 28th of November, 1971, and ask you whether or not that is your affidavit?

A Yes, it is.

MR. CALIFANO: Your Honor, I move that Plaintiffs' [247] Exhibits 12 and 13, marked for identification, be placed in the record.

THE COURT: I would like some explanation of the affidavit. I don't understand the affidavit.

I will receive the affidavit but—

THE WITNESS: Do you want my response to the affidavits?

THE COURT: Yes.

THE WITNESS: There was a subsequent affidavit filed, which explained fully the difference between this affidavit and another one, before the Court out in the Western District in Washington. The other affidavit was signed by me several months later.

THE COURT: Is this in error, are you saying?

THE WITNESS: No. At the time this was under consideration, we did propose or consider a policy which would have permitted interviews by the press to inmates. Subsequent to that, and after very careful deliberation and study and discussion with our wardens, and other people in the correctional field, we did change our mind and did not institute the policy that we indicated in this earlier affidavit.

This was all explained to the Court by a subsequent affidavit, which was filed out there. I think it is available to the gentlemen.

THE COURT: Well then, I think we ought to have, before this proceeding, the other affidavit as well, so the [248] record is complete.

MR. CALIFANO: It is fine with us.

THE COURT: I don't think we ought to take one document out of context.

MR. CALIFANO: We did not know about the other affidavit.

THE WITNESS: It was filed very clearly in this case.

MR. CALIFANO: Do you have the other affidavit?

MR. KATZ: Do you have any more questions of Mr. Carlson?

THE COURT: Wait a minute. I asked you, Mr. Katz, do you have another copy of that affidavit?

MR. KATZ: Yes, Your Honor.

THE COURT: May I see it?

MR. KATZ: Yes, Your Honor.

I ask that this be marked as Government's Exhibit 13.

THE DEPUTY CLERK: Defendant Government's Exhibit No. 13, marked for identification.

(Whereupon, the subsequent Carlson affidavit was marked Government's Exhibit No. 13, for identification.)

THE COURT: Thank you.

I will receive the affidavit that you have offered, if you offer Government's 13 with it. Otherwise, I won't [249] receive it.

MR. CALIFANO: Your Honor, absolutely. We were not aware of this until just now.

THE COURT: Then both Defendants' Exhibit 13 and the affidavit which was marked Plaintiffs' 13 will be received in evidence so the full situation is there.

(Whereupon, Plaintiffs' Exhibit No. 13 and Government's Exhibit No. 13 were received in evidence.)

MR. CALIFANO: And the memorandum, Your Honor?

THE COURT: I haven't ruled on that. I think I need some testimony about that other document before I act on it.

Mr. Katz is asking you whether you are going to ask him anything about it or whether you are not. I am going to wait until the witness has completed his testimony before I rule on the admissibility of the other document which I think is Plaintiffs' 12.

BY MR. CALIFANO:

Q Mr. Carlson, in your affidavit, which is Defendants' 13, your second affidavit, you state that—

A I don't have a copy of that.

THE COURT: He can have the copy that was handed me. I don't need it. That is Government's 13 you are talking about now.

[250] BY MR. CALIFANO:

Q You indicated at the bottom of the first page that:

"This policy area was also a subject of discussion with over 40 state correctional administrators at a recent conference in Atlanta, Georgia, and it was reviewed with officials in the Department of Justice having a particular interest in this field."

Was that the Attorney General?

A No, it was not. As I recall, it was in the United States Attorney's office, United States Marshal's office, and others that had direct relationship with the matter of individual interviews by the press.

MR. CALIFANO: I have no further questions, Your Honor.

### CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Carlson, you have before you the Plaintiffs' Exhibit 13.

A Yes, I do.

Q When was this affidavit filed?

A December 28, 1971.

Q And this was filed where?

A In the United States District Court for the Western District of Washington.

Q What was the policy statement referred to in that affidavit of 1966?

[251] A The previous policy statement had no contact whatsoever between the press and individual inmates, either by interviews or by correspondence.



**Q** And was this previous policy statement at issue in this lawsuit in the State of Washington?

**A** Yes, it was the subject of litigation.

**Q** And what was the reason this affidavit was filed?

**A** I don't recall the specific nature of it. It was handled by our legal counsel's office. At the time, however, we were in the process of reviewing a number of our policies and procedures. We had already made a decision to change our prior policy on that. We hadn't formalized or finalized it at that time. As a result, this was filed in the case out there, indicating we were contemplating a significant change in our prior policy.

**Q** Subsequent to the date of the filing of this affidavit, what further actions were taken with respect to changing the policy?

**A** The final policy which was eventually issued did not provide for the interviews by members of the press. It did, however, provide for the press to correspond with inmates through our—

**THE COURT:** That is the policy that is before me.

**THE WITNESS:** That is correct.

[252] **BY MR. KATZ:**

**Q** Subsequent to the filing of this first affidavit, you engaged in substantial discussions of this matter with whom?

**A** It was reviewed by a number of parties and agencies that would be involved. All of our wardens, top institutional staff, as well as the administrators in the central office in the Bureau of Prisons had in-put. We discussed it with a number of other correctional officials, state and local; and it was reviewed very carefully by all of the parties that would be involved in the eventual issuance of the policy statement.

**THE COURT:** That was the matter you testified about when you were last here.

**THE WITNESS:** That is correct.

**BY MR. KATZ:**

**Q** Based on all this in-put that you subsequently received after this first affidavit was written, you changed your mind?

A Yes, the eventual policy, which is the subject of this hearing, was promulgated and it did not provide for the inmates to be interviewed, identifiable inmates to be interviewed by the press.

Q That policy, the one which is before the Court, was promulgated approximately when?

A I don't recall the specific date of its issuance. I suspect early in '72.

Q Was it in February of 1972?

[253] A Yes, I believe it was in February.

Q And upon its issuance, did you make a report to the Court in which that litigation was pending in which that first affidavit was filed?

A Yes, I am sure that was a matter before the Court in the litigation in the Western District of Washington.

Q And you fully advised that Court of the process which you have described and of the fact that you did change your mind and that you did issue a different policy statement?

A Yes, we filed a subsequent affidavit which I very carefully went over with my legal counsel and we intended to be totally candid with the Court in explaining the rationale for our change, and it was filed.

Q That is the affidavit which has been introduced into evidence in this proceeding as Government's Exhibit No. 13, and which you have before you?

A That is correct.

MR. KATZ: I have no further questions.

THE COURT: I have a couple of questions, Mr. Carlson.

Are you able to enlighten the Court in any way as to why the Attorney General, and yourself, were unwilling to attempt to implement the order of the Court that was entered in this case in the earlier proceeding, in which I strongly urged and suggested that the Bureau of Prisons attempt to outline and indicate under what conditions the Bureau felt that an interview [254] with a prisoner might be appropriate?

THE WITNESS: Your Honor, we very carefully studied your order and discussed the entire situation very carefully within the Bureau of Prisons.

It is our feeling that if we would promulgate such an order, it would immediately prompt a number of show-cause orders across the country, whenever an individual interview was turned down. We could make an order which would be very restrictive and give the warden total discretion, as many states have done. But our feeling was that if we did that, every time a case was turned down by a warden, it would be immediately subject to litigation throughout the country. We felt that this would not be desirable.

In addition, we still feel that the so-called Big Wheel theory, which was advanced to the Court, is an appropriate part of the total correctional process. That the few inmates who seek notoriety, who seek the newsworthiness can cause serious disruptions in institutions.

THE COURT: Even if you don't have to let them be interviewed?

THE WITNESS: Well, if we promulgate a policy such as you suggested, Your Honor, I am afraid what would happen would be that the vast majority of inmates that we would approve would not be the ones that the press would want to interview.

THE COURT: That wouldn't make any difference.

[255] THE WITNESS: It would in the sense that we would then have show-cause orders as to why we turned down other inmates.

THE COURT: You have show-cause orders a lot of times on a lot of other aspects of prison work now.

THE WITNESS: Yes, we do.

THE COURT: What difference—

THE WITNESS: It would greatly exacerbate the problem we already face in terms of many of these orders. It takes a substantial amount of our staff's time and our resources now.

THE COURT: In other words, it is a matter of your convenience, not a matter of the First Amendment? In other words, it would just make it difficult for you?

THE WITNESS: It would make it more difficult than it is at the present time. In addition, we feel that the policy we have promulgated is a reasonable policy.

THE COURT: I am aware of that.

So that what is presented here, I can take it to be an unwillingness on the part of the Defendants to consider any adjustment whatsoever in this policy of any kind, shape or description, with respect to interviews. Is that what you are telling me? Is that right?

THE WITNESS: Up to this point in time, the answer is, yes.

THE COURT: This is the point in time.

[256] THE WITNESS: In terms of the future, obviously, we review all of our policies and procedures, and we may subsequently make changes.

THE COURT: Do you believe that there is no category of prisoner under your direction and control that should be allowed to talk to the press, whether the man is in work release, or whether he is in college, or whether he is on some work detail? That he shouldn't be permitted under any circumstances to talk to the press? That is your penal position, is that right?

THE WITNESS: No. The position I would take, Your Honor, is that if we permitted that individual to be interviewed, it would be extremely difficult for us to say that other individuals could not also be interviewed.

THE COURT: I don't understand why.

THE WITNESS: Well, if we had such a policy, the first thing we would do, when it was denied, would be to go back into court on a show-cause order as to why we accepted one interview and not another.

THE COURT: Could you not justify that?

THE WITNESS: It would be extremely difficult in some cases and also extremely time-consuming in terms of the resources we have at our disposal.

THE COURT: So what you suggest to me is that the compelling necessity is created by the lack of governmental resources?

[257] THE WITNESS: Not in total. That is one factor. The other factor is that many inmates who would desire to be interviewed and whom the press would be interested in interviewing, could be a very disruptive influence in many of our maximum security institutions.

THE COURT: You wouldn't be required to permit any interviews in maximum security institutions.

What I find so difficult, and what I need your help on, and I'm sure that the Court of Appeals needs your help on, is the blanket character of the prohibition. I think I have some understanding from these hearings and from my experience of the kind of problems that that judge out in Washington sounded off on, but that isn't what this case is about. You have a blanket policy.

THE WITNESS: That is correct.

THE COURT: I haven't heard yet—and I wanted to give you the opportunity, because there isn't any evidence being submitted to me—as to the need of a total exclusion as opposed to what the Court indicated would be a reasonable approach to the problem in the light of the particular difficulties with which you are concerned.

THE WITNESS: Your Honor, as I have attempted to explain, and apparently have been unsuccessful, I feel if we did permit the press to interview some inmates on work release or minimum security institutions, such as the Kennedy Youth [258] Center, this would then raise the issue in all our other institutions as to why we did not permit other inmates to have the same opportunity. It would present us with a number of major problems in our facilities, such as our maximum security penitentiaries. This is one factor.

The other factor, which I mentioned, and still subscribe to, is the so-called Big Wheel theory that certain inmates in the big institution can become a disruptive force if given the publicity that many of them seek.

THE COURT: Very well. You have had your opportunity, Mr. Carlson.

Does anybody have any further questions?

MR. CALIFANO: No.

THE COURT: Thank you very much.

MR. KATZ: Your Honor, I want to ask Mr. Carlson a couple more questions.

THE COURT: All right.

BY MR. KATZ:

Q Mr. Carlson, you, of course, have already been qualified in the earlier proceedings here as an expert in the field of corrections and penology.

Do you feel that there is a need, across the board, in all areas, to treat all inmates incarcerated in your institutions, as far as possible, equally?

A Very definitely, I feel that is one of the very basic [259] tenets of sound correctional administration.

THE COURT: But you don't do that, do you, Mr. Carlson? You have people that you commit to all kinds of different types of commitment, based upon your appraisal as to the man's characteristics. You send some people to a hospital; you send some to a work camp; you let some go out on furlough; you let others not. Your whole system has built into it a whole series of differentiations between criminals.

THE WITNESS: Based upon correctional needs, Your Honor, not upon status prior to incarceration or status within the institution.

The narcotic example, the Title 2 case goes to one of our narcotic treatment programs.

THE COURT: I understand.

THE WITNESS: Which is a correctional need. A person that goes to a hospital does so because of correctional need.

THE COURT: A person goes to school because of correctional need?

THE WITNESS: That is correct.

THE COURT: And everybody that has a need for education is allowed to go and get education in your system?

THE WITNESS: Ultimately, I would certainly hope that this would be true.

THE COURT: Ultimately, but you make a determination—

THE WITNESS: When the resources are available, we [260] certainly hope so, Your Honor.

THE COURT: Well, I had thought the great virtue—I don't like to get into a debate with you and I don't mean to. You and I have worked together on many problems and I have great respect for you in your job.

THE WITNESS: Thank you, Your Honor.

THE COURT: I thought the whole strength of the Federal System was that you were attempting to build a

system that had different types of institutions, to serve different types of needs, and to treat prisoners differently, in the interests of both the punishment and confinement and rehabilitation objectives, and that you had been a leader in the correctional system in bringing that into play.

To hear you say that you treat everybody the same in the system comes to me as an extraordinary surprise.

**THE WITNESS:** Your Honor, I said that in terms of treatment. Let me explain my position. In terms of the correctional needs of the offender, I would hope that we differentiate based upon the needs of the offender for particular types of correctional treatment. In terms of over-all treatment, in terms of the inmate, what his economic status is, what his socio-economic class may be, what his prior position may be, what his race or religion may be, I hope we do treat them all equal. This is the basic tenet I was referring to. Not his correctional needs.

[261] **THE COURT:** Very well. Do you have anything further?

**BY MR. KATZ:**

**Q** Mr. Carlson, as far as you know, is it not true that the Department of Justice has taken an appeal in this case?

**A** Yes, that is correct.

**Q** At the time of His Honor's ruling earlier in this case, consideration was given to the possibility of taking an appeal?

**A** Yes, that is correct.

**Q** So might this not be one of the reasons why no immediate changes were made in the policy?

**A** Yes. As I am sure the Judge knows, this same subject has been the subject of litigation in a number of different districts across the country, the Western District of Washington being only one. We were confronted with a situation that involved a number of different districts, a number of different decisions, and we felt that the proper course in this particular case was the appeal which was noted.



**THE COURT:** That wasn't my point, Mr. Katz, for whatever value it will be to you.

Of course, the Court was well aware it was appealed and, of course, the United States has the fullest right of appeal. What I had hoped was that the appeal would be taken against an order that was worked out with the cooperation of the United States, reserving all of its rights to appeal, but that would deal with the practical problems that were presented, by [262] accommodating to the Court's order, so that the Court of Appeals would know, with the aid of the United States—which was denied this Court, flagrantly, denied this Court—what an appropriate regulation would be, consistent with my order.

At this present moment, I have not heard from the United States on that. So what I am pointing out to you is, what I was concerned with was that, not with the question of appeal, and not with the question of stay, and not with the question of the United States preserving its rights.

I have said this to your predecessors, and everybody involved in this case. I would like to see and have the assistance, and I brought it up again at the last pre-trial before these proceedings, in the formulation of an order which, if the Court is sustained, would take cognizance of practical problems within the prison system; and so far, the United States and the Defendants have refused to do that. So that the order, if I am sustained, will be an order imposed by the Court, without the benefit of the assistance of the litigants. That is, I think, an irresponsible thing for the United States to do. I have made that clear to you. I made that clear to Mr. Aikens. I made it clear to Mr. Hannon. Sometimes the United States wins and sometimes it loses; and when it wins or loses, justice is done. But the result is better achieved if the United States can give some assistance to a judge struggling with a difficult problem to meet the practical aspects of his judgment. As to [263] that, the United States has refused to give any cooperation whatsoever. I think it is a most reprehensible position in this litigation, which has nothing to do with the merits, has nothing to do with the outcome.



Particularly in this field, where we are concerned with the handling of people that we commit to these prisons, and concerning whom we get very little information, when we seek the assistance of the Attorney General, to whom we commit these people, it would seem to me appropriate that he would give that assistance; but he has refused to do so.

That is what I was talking to Mr. Carlson about, and not the legal rights. You have every legal right in the world to go everywhere. If you win, justice is done; and if you lose, justice is done. But it seems to me we need a practical order to carry out what I feel is appropriate here. If I am wrong, then it will never go into effect. But it is appropriate, I think, to assist the Court when a Court is dealing with a matter as sensitive and as difficult as this; and the refusal of the Defendants to do that, I don't believe can be justified.

I was asking whether Mr. Carlson had played a part in that determination.

THE WITNESS: Your Honor, we have reviewed—

THE COURT: It is not a question of your right of appeal.

THE WITNESS: We have reviewed this matter very [264] carefully. We have studied alternatives. As I say, this is something which has taken a great deal of staff time, both at the institutional level, my legal counsel's level, and at my level. We are very much concerned about it. We are in the process of considering this to the fullest extent possible. So I can assure you that we are cognizant of your interest in this case.

THE COURT: It isn't my interest. What I would like to have is an order that was practical and I am going to have to shape it without your help. Of course, I think that is unfortunate. I don't think that is the way the Bureau of Prisons and the Attorney General should work with the Court.

MR. KATZ: I have no further questions of Mr. Carlson.

THE COURT: Do you have any questions?

MR. CALIFANO: No, Your Honor.

Would you accept this in evidence, Mr. Carlson's memorandum?

THE COURT: I want to review it again. Let's deal with the other matters.

Thank you very much.

THE WITNESS: Thank you, Judge.

(Witness excused.)

MR. COOPER: Your Honor, we have a number of documents to offer in evidence. They have not all been marked. I think it would save time if we could take a recess.

[265-275] THE COURT: If you would like a little time to straighten that out and confer with Mr. Katz—

MR. COOPER: I think it would save the Court's time if we mark them in advance.

THE COURT: I can come back with respect to it. I have a number of housekeeping matters I want to discuss with counsel, once the record is closed. Why don't we take 15 minutes now and you gentlemen both get in line on your exhibits. Then I have some matters on my mind, some cases I wish to mention to the parties, and I want to be sure we are clear on the schedule about findings and things of that kind.

We will take at least 15 minutes. You let the Bailiff know if you want a little more time. It makes no difference to me. When you are ready, I will come back on the bench.

(Whereupon, a recess was taken.)

[276] MR. COOPER: Your Honor, we have a number of documents we would like to offer into evidence at this time.

The first is Plaintiff's Exhibit No. 14, deposition of Elie Able.

MR. KATZ: No objection, subject to the objections noted in the deposition.

THE COURT: All right.

Plaintiffs Exhibit No. 14 was received in evidence.)

**MR. COOPER:** I will point out, Your Honor, that on page 5, line 11, of that deposition appeared the name Bob Marvin Kalb, and that should read Marvin Kalb. Mr. Katz agrees to that.

**THE COURT:** All right. I don't think that will affect the outcome.

**MR. COOPER:** The next exhibit is Plaintiffs' Exhibit No. 15, the Model Act prepared by the National Council on Crime, and Delinquency which was discussed at our last hearing.

**THE COURT:** I took notice of that. I think it is well to have it in the record. It will be received.

**MR. KATZ:** We would like to make an objection to that for the record, Your Honor.

**THE COURT:** What is the ground?

**MR. KATZ:** There is no relevance to the specific [277] issue in this case.

**MR. COOPER:** I believe this is a constitutional case. It is appropriate for the Court to consider the best thinking that is available in the field. I think this Model Act would be part of that.

**THE COURT:** What is the objection? It is a model act by experts dealing with the issue of interviews, so I would like to know what your objection is?

**MR. KATZ:** If there are specific provisions in there relating to interviews, we will withdraw the objection.

**THE COURT:** There are specific provisions relating to interviews. I recall from reviewing it when the matter was first before us.

It will be received.

(Plaintiffs' Exhibit No. 15 was received in evidence.)

**MR. COOPER:** The next exhibit is Plaintiffs' Exhibit No. 16 which is the text of a speech by Mr. Maurice H. Sigler, president of the Maximum Correctional Association, and chairman of the United States Board of Parole, which was put out by the Department of Justice.

**THE COURT:** It doesn't seem to me that is an official document. The man was retiring. I have read the speech: I am familiar with it. He is a strong advocate

of interviews. It may be briefing material, but I don't think it [278] has to be received in evidence.

MR. COOPER: I think we might well brief it.

THE COURT: It is identified. It will not be received in evidence.

MR. COOPER: Next is a set of letters—Exhibit 17-A, 17-B, 17-C and 17-D—which are copies of form letters that we sent out to various correctional jurisdictions in the United States and abroad in an effort to obtain from them copies of their policy statements and regulations.

THE COURT: Well now, this is the problem that was discussed at pretrial. In response to that, you have heard from a substantial number of jurisdictions.

In some cases, as I understood it at pretrial, formal regulations were submitted to you and they will be offered. In other instances you got a letter that indicated what the policy was, and that that letter in some occasions referred to a particular incident or contained colloquy comment of some kind.

MR. COOPER: There are various types of letters, Your Honor. There are a couple that actually quote from regulations which were not attached to the letter. There are others that say "we have no written policy, but our practice is such and such." And there are others that go on to provide commentary on how a policy has worked and incidents and other matter.

[279] THE COURT: As I understand it, the United States has no objection to those responses which submit regulations. But you have objections to the others.

Is that right, Mr. Katz?

MR. KATZ: Your Honor, that is essentially correct. We have previously, each one of these was marked and they have been broken down by regulation and by letter into separate categories, and I guess we will have to go down the line with our objection.

THE COURT: I will receive the letters of inquiry indicating what was sought. There is no problem about that.

(Plaintiffs' Exhibit Nos. 17-A, 17-B, 17-C and 17-D were received in evidence.)

MR. COOPER: That is Exhibit 17-A, B, C and D?

THE DEPUTY CLERK: May I interrupt, Your Honor. I don't have any copies of those. I can't find them as exhibits. I was just wondering if you furnished us a copy?

MR. COOPER: I gave them to you and they were marked.

THE COURT: All right. Mr. Clerk, be sure you are on board as we go along, because this is the time.

We are all set on that then. Very well.

MR. COOPER: All right.

THE DEPUTY CLERK: Yes.

[280] MR. COOPER: Next, Your Honor, is Plaintiffs' Exhibit 18-A which is an Alaska regulation on access to the media.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 18-A was received in evidence.)

MR. COOPER: 18-B is the covering letter which accompanied that regulation, which makes clear that it is the current regulation in Alaska.

MR. KATZ: We object to the letter.

THE COURT: Overruled. I will receive the letter saying that it is a current regulation.

(Plaintiffs' Exhibit No. 18-B was received in evidence.)

MR. COOPER: Next is 19-A, Plaintiffs' Exhibit 19-A, a Connecticut directive dealing with the news media and access.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 19-A was received in evidence.)

MR. COOPER: 19-B, which is the covering letter from Connecticut.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 19-B was received in evidence.)

[281] MR. COOPER: 20-A, the Georgia Administrative Rules, Section 125-1.05, which expresses the news media policy of the Georgia Correctional System.

**MR. KATZ:** No objection.

(Plaintiffs' Exhibit No. 20-A was received in evidence.)

**MR. COOPER:** 20-B is the Georgia covering letter.

**MR. KATZ:** We would object to that particular covering letter.

**THE COURT:** I guess I am going to have to look at each one of these exhibits. I would appreciate your stating the grounds of your objection as we go along, Mr. Katz. It would help the Court.

**MR. KATZ:** This is clearly hearsay.

**THE COURT:** Just a moment. What exhibit are we talking about now?

**MR. COOPER:** We are talking about Exhibit 20-B which is the covering letter from Georgia.

**THE COURT:** Let me read it first. Then I will hear what you have to say.

It is a letter helpful to the United States. If they wish to object, I will sustain the objection. I think it is hearsay.

**MR. COOPER:** May I make a brief point in support of admitting it, Your Honor, even though it is hearsay.

[282] We believe there is authority for admitting hearsay evidence in a case of this sort.

I cite to the Court *Dallas County vs. Commercial Union Insurance Company, LTD.* 286 Fed 2nd, 388, 5th Circuit, 1961; *Zippo Manufacturing Company vs. Rogers Imports, Inc.*, 216 Fed supp. 670, at pages 680 to 86, Southern District of New York, 1963; and *United States vs. Barbati*, 284 Fed supp. 409, Eastern District of New York, 1968.

**THE COURT:** Those cases don't involve information of this kind. I am familiar with two of them. Those were cases that have to do with much more routine kind of assembly of data than the discussion here which is with respect to particular incidents.

**MR. COOPER:** I am speaking generally about the commentary in the Georgia letter.

**THE COURT:** I am speaking about 21-B.

**MR. COOPER:** Right, Your Honor.

**THE COURT:** Which concerns a specific instance.

**MR. COOPER:** I am thinking, also, of the statement in that letter that: "We have experienced no difficulties in this area."

I would think a statement of that sort coming from a commissioner of corrections is an indicia of reliability.

It is not convenient for us to bring in commissioners from the 50 states here to testify. There is no convenient [283] method for obtaining this kind of information which is highly relevant to this case other than by the method that we have used.

This is a non-jury case.

**THE COURT:** This letter does not contain the statement you have just indicated to me.

**MR. COOPER:** The Georgia letter, Your Honor.

**THE COURT:** I have 21-B in front of me.

**MR. COOPER:** I'm sorry. You should have 20-B, Your Honor.

**THE COURT:** I'm sorry. I was looking at 21-B.

**MR. COOPER:** I'm sorry.

**THE COURT:** I must have misheard you. Let me look at 20-B.

That is the hearsay statement that I suppose the Government objects to. The others are within those cases. I can receive the letter without that statement.

**MR. COOPER:** I would ask that, in general, statements of that sort be received in this proceeding, Your Honor, because they are relevant to the Courts that will consider this case, to their decision on the issues in this case. And there is no other convenient way for obtaining that information. We can't bring all of the commissioners to Washington.

**THE COURT:** It isn't very precise when a man says "we have no difficulties in this area." I don't know whether [284] he is familiar with the difficulties that are in this case. That is the problem.

**MR. COOPER:** Well, we ask that it be considered for what it is worth. The statements vary in precision from one letter to the next. I don't know that we should try to articulate the degrees of precision here. I assume all statements—



THE COURT: I will receive it all except the next to the last paragraph.

MR. COOPER: All right.

(Plaintiffs' Exhibit No. 20-B was received in evidence.)

MR. COOPER: Next is Plaintiffs' Exhibit 21-A, a Kentucky directive. Then 21-B, the Kentucky covering letter.

THE COURT: You have no objection to 21-A, Mr. Katz?

MR. KATZ: No objection to 21-A, Your Honor. We object to 21-B.

THE COURT: I will sustain it as to 21-B.

(Plaintiffs' Exhibit No. 21-A was received in evidence.)

MR. COOPER: We offer 21-C and 21-D which are materials that were sent in response to our letter simply in order to—

THE COURT: I will receive them.

MR. KATZ: Your Honor, we object to them.

[285] THE COURT: Yes. But I will receive them. Those are official documents indicating the scope and nature of the correctional institution. They are admissible.

(Plaintiffs' Exhibit Nos. 21-C and 21-D were received in evidence.)

MR. COOPER: Plaintiffs' Exhibit 22-A is the Maine policy statement.

THE COURT: You have no objection to 22-A?

MR. KATZ: Just a second, Your Honor. Let me find it.

THE COURT: That is their policy.

MR. COOPER: That is their policy statement.

THE COURT: This is their formal policy statement.

MR. KATZ: I have no objection to that.

(Plaintiffs' Exhibit No. 22-A was received in evidence.)

MR. COOPER: 22-B is the letter of transmittal.



MR. KATZ: No objection.

THE COURT: It just clutters the record. It doesn't say anything.

MR. COOPER: It simply advises that as of the date of the letter that was the policy.

THE COURT: Very well.

[286] (Plaintiffs' Exhibit No. 22-B was received in evidence.)

MR. COOPER: 23-A is the Maryland policy statement.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 23-A was received in evidence.)

MR. COOPER: 23-B is the Maryland covering letter.

MR. KATZ: No objection to 23-B.

THE COURT: Just a minute. Let me look at 23-B.

MR. COOPER: I don't think there is any hearsay in 23-B.

THE COURT: There isn't any meat, either.

MR. COOPER: Again, it advises that as of the date of the letter, that is the policy statement.

THE COURT: I am going to assume these are all current.

I will not take 23-B. 23-C, I will take.

(Plaintiffs' Exhibit 23-C was received in evidence.)

MR. COOPER: 23-D is a filled out questionnaire which we received in response to our letter to Maryland.

MR. KATZ: We object to that.

THE COURT: Sustained.

MR. COOPER: 24-A is the Montana policy statement.

THE COURT: I will receive that.

[287] (Plaintiffs' Exhibit No. 24-A was received in evidence.)

MR. COOPER: If we assume that the statements are all current, then 24-B is unnecessary.

THE COURT: Withdrawn, 24-B.

MR. KATZ: 24-B is withdrawn?

THE COURT: Yes.

(Plaintiffs' Exhibit No. 24-B was withdrawn.)

MR. COOPER: 25-A is the Nebraska policy statement.

THE COURT: That will be received.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 25-A was received in evidence.)

MR. COOPER: 25-B is a set of other Nebraska regulations dealing with communications between inmates and the public.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 25-B was received in evidence.)

MR. COOPER: 25-C is the covering letter from Nebraska.

MR. KATZ: Objection.

THE COURT: Sustained.

MR. COOPER: 25-D is a Nebraska pamphlet from their [288] Penal and Correctional Program.

MR. KATZ: No objection.

THE COURT: That will be admitted.

(Plaintiffs' Exhibit No. 25-D was received in evidence.)

MR. COOPER: 26-A is the New Jersey policy statement.

MR. KATZ: No objection.

MR. COOPER: Statement of the standards.

THE COURT: That will be received.

(Plaintiffs' Exhibit No. 26-A was received in evidence.)

THE COURT: Are we going too fast for you, Mr. Clerk?

THE DEPUTY CLERK: No, sir.

THE COURT: All right.

MR. COOPER: 26-B, I will withdraw.

(Plaintiffs' Exhibit No. 26-B was withdrawn.)

MR. COOPER: 27-A is the New Mexico policy statement, memorandum 55-72.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 27-A was received in evidence.)

MR. COOPER: 27-B is a letter that the state sent us in order to explain more fully their new policy.

[289] MR. KATZ: We object to that.

MR. COOPER: It simply explains the policy.

THE COURT: I think it is part of the policy. Overruled. It will be received.

(Plaintiffs' Exhibit No. 27-B was received in evidence.)

MR. KATZ: Your Honor, this appears to be a letter to some third party. I don't see where this is part of the policy.

THE COURT: What is your next exhibit?

MR. COOPER: The next is 27-C.

MR. KATZ: What was Your Honor's ruling on that?

THE COURT: I said that it would be received.

MR. COOPER: 27-C is the New Mexico covering letter.

MR. KATZ: We object to that.

THE COURT: Sustained.

MR. COOPER: 28-A is the North Carolina policy statement.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 28-A was received in evidence.)

MR. COOPER: 28-B will be withdrawn.

(Plaintiffs' Exhibit No. 28-B was withdrawn.)

MR. COOPER: 29-A is an Ohio administrative [290] regulation.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 29-A was received in evidence.)

MR. COOPER: 29-B is the Ohio covering letter.

MR. KATZ: Objection.

MR. COOPER: It contains the Commissioner's interpretation of the regulation.

THE COURT: I will sustain the objection.

MR. COOPER: 29-C is an Ohio—

THE COURT: Many of these exhibits are helpful to your case, Mr. Katz.

MR. KATZ: I understand. But we want to be consistent in our position.

THE COURT: Consistency is not the mother of virtue.

MR. COOPER: 29-C is an Ohio task force report containing a comprehensive study of the Ohio Correctional System, in the context of which the Ohio regulation was promulgated.

MR. KATZ: We object to that.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 29-C was received in evidence.)

THE COURT: Now, I guess I need another folder, Mr. Clerk. We are into another bunch now.

[291] Thank you, sir.

THE COURT: Oregon is 30-A?

MR. COOPER: 30-A is the most relevant Oregon policy statement.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 30-A was received in evidence.)

MR. COOPER: 30-B is a set of other Oregon policy statements which bear on inmate access, contacts between inmates and the community.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 30-B was received in evidence.)

MR. KATZ: They seem to have a great many things here, Mr. Cooper.

MR. COOPER: There are several together. I picked out the one most pertinent to our inquiry and made it 30-A.

MR. KATZ: Which one is that?

MR. COOPER: Oregon policy statement G-7.

And 30-B is policy statements G-8, 18 and OSP policy No. 2. These deal with related areas.

THE COURT: They will be received.

MR. COOPER: 30-C is a set of Oregon annual reports on their institutions.

MR. KATZ: We object to those.

[292] THE COURT: It will be received.

(Plaintiffs' Exhibit No. 30-C was received in evidence.)

MR. COOPER: 30-D is withdrawn.

(Plaintiffs' Exhibit No. 30-D was withdrawn.)

MR. COOPER: 31-A is a Pennsylvania administrative directive.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 31-A was received in evidence.)

MR. COOPER: 31-B is withdrawn.

(Plaintiffs' Exhibit No. 31-B was withdrawn.)

MR. COOPER: 32-A is the South Carolina policy statement as shown in the covering letter which is offered as Exhibit 32-B. 32-A has no identification on it.

MR. KATZ: We have no objection to 32-A and will stipulate that it is the South Carolina policy. We do object to 32-B.

THE COURT: I will sustain the objection as to 32-B, with the stipulation that 32-A from the South Carolina Department of Corrections adopting the uniform policy and procedural guidelines of the Association.

[293] (Plaintiffs' Exhibit No. 32-A was received in evidence.)

MR. COOPER: 33 is a letter from Virginia quoting a Virginia statute as the basis for prohibition of interviews with inmates in Virginia.

THE COURT: That will be received.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 33 was received in evidence.)

MR. COOPER: 34-A is a Wisconsin letter quoting a regulation.

THE COURT: It will be received.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 34-A was received in evidence.)

MR. COOPER: 35-A—

THE COURT: What about 34-B? 34-B seems to be—

MR. COOPER: A Wisconsin annual report.

MR. KATZ: No objection, Your Honor.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 34-B was received in evidence.)

MR. COOPER: 35-A is a Vermont visiting regulation. 35-B is a Vermont mail regulation. 35-C is a Vermont letter making clear that 35-A and 35-B both include the press.

[294] MR. KATZ: I don't seem to have copies of those, Mr. Cooper.

MR. COOPER: I gave them to you yesterday, Mr. Katz.

MR. KATZ: May I look at them.

Your Honor, we do object to this entire Vermont scheme. The regulations on their face have no bearing to press interviews, and the statement in the letter to the fact that they do is hearsay.

THE COURT: I will receive both the statements and the letter.

(Plaintiffs' Exhibit Nos. 35-A, 35-B and 35-C were received in evidence.)

MR. COOPER: 36 is a letter from Alabama which states the Alabama policy, the only form to our knowledge in which it has been stated.

MR. KATZ: May I have a moment, Your Honor, to find that.

We object to that letter.

THE COURT: Sustained.

MR. COOPER: 37 is a letter from Arizona.

MR. KATZ: Objection.

MR. COOPER: Setting forth the Arizona policy.

THE COURT: Sustained.

MR. COOPER: Perhaps it would save time, Your Honor, [295] if I state that Exhibits 38 through 53 come from states which have no formal policy on press access to inmates. The policy in these jurisdictions is unwritten, but we do have in these letters statements on the authority of the chief executive offices of the corrections departments as to what their practice actually is.

In some cases other documents were sent—annual reports and similar documents.

MR. KATZ: On that basis we object to Plaintiffs' Exhibit Nos. 38 through 53 for identification.

THE COURT: I am going to reserve ruling on this latter group. I will deal with it in my decision. I do think that the Court of Appeals is entitled to know whether there is a policy or not in these institutions. Quite apart from the comments in the letters, it seems to me the letters perhaps are admissible simply for the purpose of saying there isn't any policy.

MR. COOPER: Any formal written policy.

THE COURT: Any formal policy, and it is done on an ad hoc basis.

I think perhaps they are admissible for that limited purpose. So I will reserve ruling on this group.

MR. COOPER: There are additional exhibits, Your Honor. Plaintiffs' Exhibit 54-A—

THE COURT: Just a moment. I will get that folder [296] from the deputy clerk.

What is your first one?

MR. COOPER: 54-A is a set of U. S. Army regulations, 190-4. Within those regulations are provisions dealing with press access to inmates.

THE COURT: They will be received.

MR. KATZ: We have no objection to the Army regulations.

(Plaintiffs' Exhibit No. 54-A was received in evidence.)



MR. COOPER: 54-B is the annual report of the Army Correctional Training Facility.

MR. KATZ: We object to that.

THE COURT: I am going to receive all of these U. S. Government documents.

MR. COOPER: That would cover 54-B, 54-C and 54-D.

THE COURT: They will be received.

(Plaintiffs' Exhibit Nos. 54-B, 54-C and 54-D were received in evidence.)

MR. COOPER: 54-E is withdrawn.

(Plaintiffs' Exhibit No. 54-E was withdrawn.)

MR. COOPER: 55-A is a letter from the Department of the Navy quoting the Navy regulations.

[297] THE COURT: 54-E is a letter from the Department of the Army that you withdraw?

MR. COOPER: I am withdrawing, yes.

55-A, I withdraw that, from the Navy.

(Plaintiffs' Exhibit No. 55-A was withdrawn.)

MR. COOPER: 55-B quotes from a Naval regulation.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 55-B was received in evidence.)

MR. KATZ: We will stipulate to that only to the extent that it quotes from the regulations, but we object to the last two paragraphs on page 2.

THE COURT: I will sustain that objection.

MR. COOPER: 56-A and B are of the same character as the documents from the states on which you have reserved.

THE COURT: I will reserve ruling on 56-A and B.

MR. COOPER: 57-A is a set formal prison rules from England which includes provisions on press access to inmates, but only as explained in the covering letter from England. That is, the provisions in the prison rules do not in terms apply to newsmen. But the covering letter explains that they do.



It is a similar situation to the one in Vermont, with a reverse result.

MR. KATZ: We will object to it on the same basis.

[298] THE COURT: I will receive those, 57-A and B.

(Plaintiffs' Exhibit Nos. 57-A and 57-B were received in evidence.)

MR. COOPER: 58-A is an extract from the New Zealand Department of Justice, Penal Division, Manual General Orders.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 58-A was received in evidence.)

MR. COOPER: 58-B is a set of extracts from the New Zealand Penal Institutions Regulations, 1961.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 58-B was received in evidence.)

MR. COOPER: 58-C is the annual report of the New Zealand Department of Justice, 1971-72.

MR. KATZ: Objection.

THE COURT: I am going to receive both of those. They are governmental reports, 58-C and D.

(Plaintiffs' Exhibit Nos. 58-C and 58-D were received in evidence.)

MR. COOPER: 58-E, I withdraw.

(Plaintiffs' Exhibit No. 58-E was withdrawn.)

MR. COOPER: 59 is a letter from Canada quoting a [299] Canadian regulation.

MR. KATZ: We object to that letter.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 59 was received in evidence.)

MR. COOPER: 60 is a letter from Israel stating the policy, but there is no citation to any formal provisions of law.

MR. KATZ: We object to that.

THE COURT: It will be received.

[Plaintiffs' Exhibit No. 60 was received in evidence.]

MR. COOPER: No. 61 is a document, a book which was qualified in the deposition of Hans W. Maltick, which will be offered this morning. Mr. Maltick stated in that deposition that the authors of this book are some of the best minds in the field of professional study of corrections. We believe that the document will provide something more than an impressionistic basis for the Court to assess inmate social relations, the role of leaders, the emergence of leaders within a prison population.

THE COURT: I will take judicial notice of it.

MR. KATZ: It will not be received in evidence, Your Honor, but you will take judicial notice of it?

THE COURT: By taking judicial notice of it, it [300] becomes a part of the matters on which I can decide the case. There is no need to put it in evidence.

MR. COOPER: Plaintiffs' Exhibit 62 is a copy of a book by George Jackson. We offer that book not for the truth of any of the statements by Mr. Jackson in the book, but solely for two purposes.

The first is to show that the book was published in October of 1970, and that has a bearing on the proper assessment of the testimony of Mr. Procunier with respect to the career of George Jackson in California institutions.

And, secondly, we offer it to show the nature of the book that Mr. Jackson had published in October 1970.

THE COURT: I will not receive it. I am familiar with the book. I have read it.

MR. COOPER: Your Honor, we believe the date of publication is relevant to Mr. Procunier's testimony. He testified that from August of 1970 to June of 1971 Mr. Jackson had 33 interviews. And that on the basis of those interviews, he became a big wheel. We believe it is relevant that a book by Mr. Jackson of that character was published in October of 1970, and that is relevant in assessing Mr. Procunier's causal analysis of Mr. Jackson's rise to prominence.

THE COURT: I have ruled that I will not receive it.

MR. COOPER: Exhibit 63 is the deposition of [301] Mr. Machacek.

MR. KATZ: Your Honor, we are going to object to the deposition of Mr. Machacek, for this reason: Mr. Machacek was a reporter for the Rochester Times, Your Honor, and what is brought out in his deposition is merely that in connection with the incident which occurred at Attica in September of 1971, Mr. Machacek wrote a story which was based on his visit to the county morgue in Monroe County, and he learned certain things as a result of that visit.

Mr. Machacek never visited a prison himself and has had no experience whatever in prison journalism. So I don't see that anything in that deposition is relevant to the issue in this case.

THE COURT: That objection seems to be well taken. I think I have to look at it. It is very hard to rule on something this long. I am familiar from reading the press and the Attica report of the role he played there.

MR. COOPER: Your Honor, we believe his deposition is relevant in showing the disadvantages in taking official statements about prison conditions and events in prisons at face value, and thus the need and thus a showing tending to show the need for reports to pursue their inquiries.

THE COURT: I will have to look at his deposition before I rule.

MR. KATZ: I submit there is ample testimony on that. [302] I feel there is nothing in the—

THE COURT: You don't accept that testimony, Mr. Katz. That is the difficulty with it. If you concede that point, there is no problem.

MR. COOPER: Your Honor, Plaintiffs' Exhibit No. 64 is the deposition of Peter Bensinger.

THE COURT: See, I don't even know who these people are. I just want to know is there any objection to it?

MR. KATZ: No.

THE COURT: Very well. It will be received then.

(Plaintiffs' Exhibit No. 64 was received in evidence.)

MR. COOPER: There is one correction that I believe should be made, a substantive correction.

Your Honor, on page 48, at line 16 of the deposition, the symbol for "answer" should be inserted before the word "Well."

A part of that answer is transcribed as part of a question.

THE COURT: Very well.

MR. COOPER: Plaintiffs' Exhibit No. 65 is the deposition of Hans W. Maltick, and there are several substantive corrections for this deposition which Mr. Katz and I have agreed upon.

THE COURT: Then I suggest you file them on a piece [303] paper.

MR. COOPER: Very well, Your Honor.

MR. KATZ: We have no objection to the admission of the deposition.

THE COURT: All right. It will be received.

(Plaintiffs' Exhibit No. 65 was received in evidence.)

THE COURT: File a piece of paper to go along with the front of it, so anybody that picks it up will be aware of those changes.

MR. COOPER: We have no further exhibits to offer, Your Honor.

THE COURT: Do you have any, Mr. Katz?

MR. KATZ: We have nothing further, Your Honor.

THE COURT: Then the record is closed.

I do briefly want to cover further proceedings in this matter.

It was agreed at pretrial that both sides would submit briefs and proposed findings of fact within two weeks. That would be what date, Mr. Clerk, two weeks from today?

MR. CALIFANO: Your Honor, since the transcript will not be ready until Monday, I wonder if we could have two weeks from Monday.

THE COURT: That is all right with me, although you have most of the transcript already. You have yesterday's [304] proceedings, don't you?

What is two weeks from Monday? What date would that be?

THE DEPUTY CLERK: December 11th, Your Honor.

THE COURT: Very well. December 11th, then, proposed findings and briefs.

I have also requested any assistance that counsel wish to give with respect to the form of the order within the determinations that the Court has made.

On the legal question, I feel that there are cases which apparently the Court of Appeals is not aware of, or at least did not mention in their order, which ought to be included in the briefing, in addition to the ones that they have mentioned.

I think it important for the parties to consider Klein-dienst vs. Mandel, decided by the Supreme Court on June 29th, which has timely relevant discussions of the issues that are before me, and I gather from the transcript that that decision was not even brought to the attention of the Court of Appeals when reference was made to other decisions of the Supreme Court that same day.

I also think the parties should consider Police Department of the City of Chicago vs. Mosley, decided by the Supreme Court on June 26th; Lloyd against Tanner, decided by the Supreme Court on June 22nd; and the decision of our Court of Appeals in Womens Strike for Peace vs. Morton, decided July [305] 14, 1972.

I find in all of these relevant discussion of the issues that are before the Court, and would appreciate the benefit of any comments counsel would have to make concerning them.

I guess that is all we have to do.

MR. CALIFANO: Thank you, Your Honor.

THE COURT: All right, gentlemen.

My plan is to send the matter, my report, back to the Court of Appeals without fail the first week of January. I intend to spend the Christmas holidays doing whatever I have to do on this matter, and, therefore, I really don't feel that I can give any extensions with respect to these time limits.

This matter is still held in the Court of Appeals under the Supreme Court stay, and I think it important that I report promptly in my special role in this referral.

So I am going to get it out in the first week of January without fail.

Thank you, gentlemen.

[Whereupon, at 12:20 p.m., the hearing was concluded.]

**CERTIFICATE OF COURT REPORTER**

I, Ida Z. Watson, certify that the proceedings in the above-entitled cause on November 21 and 22, 1972 were reported by me and other Official Reporters and that the foregoing Pages 1 to 305, inclusive, constitute the official transcript.

/s/ Ida Z. Watson

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No. 467-72**

**WASHINGTON POST CO., ET AL., PLAINTIFFS,**

**vs.**

**RICHARD KLEINDIENST, ET AL., DEFENDANTS.**

**Washington, D. C.**

**Monday, November 20, 1972**

**Deposition of**

**ELIE ABEL,**

a witness called for examination by counsel for the plaintiffs, pursuant to notice, copy of which is attached to the court copy of this deposition, at the offices of Williams, Connolly & Califano, 1000 Hill Building, Washington, D. C., by Charles H. Wilson, Jr., Esquire, before Eileen King, a Notary Public in and for the District of Columbia, beginning at 11:00 o'clock a.m., when were present on behalf of the respective parties:

**[2] For the plaintiffs:**

**WILLIAMS, CONNOLLY & CALIFANO**

**By: CHARLES H. WILSON, JR., ESQUIRE**

**1000 Hill Building**

**Washington, D. C. 20006**

**For the Defendants:**

**MICHAEL A. KATZ, ESQUIRE**

**Assistant United States Attorney**

**District of Columbia**

**United States Courthouse**

**Washington, D. C. 20001**

**INDEX**

**Witness:**

**ELIE ABEL**

**Examination by Counsel for the**

**Plaintiffs**

**Defendants**

**3**

**19**



[3] WHEREUPON,

ELIE ABEL,

the witness, called for examination by counsel for the plaintiffs and, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. WILSON:

Q Will you state your name and residence address for the record?

A My names is Elie, E-l-i-e Abel, A-b-e-l. I live at 435 Riverside Drive, in New York City.

Q What position do you hold?

A I am the Dean of the Graduate School of Journalism at the Columbia University, also the Goedfrey Lowell Cabot Professor of Journalism.

Q How long have you held the position of Dean of the Graduate School of Journalism?

A Since February 1, 1970.

Q Have you had any working experience in journalism, prior to that position?

A Yes, about twenty-five years of it.

Q Will you describe your working experience as a journalist?

[4] A Yes, I was a student at the school of which I am now the Dean, in 1941, and World War II came along and somewhat interrupted my career for four years, but I resumed it immediately afterward, first as a foreign correspondent in Germany, in the Occupation of Germany. In 1946 and 1947, for the North American Newspaper Alliance.

I then spent a couple of years at the United Nations, as a correspondent for a now defunct newspaper called Overseas News Agency.

In 1949, I joined the New York Times and spent ten years with the Times, most of those years as either a national correspondent or a foreign correspondent.

For two years after that, I was Washington Bureau Chief for the Detroit News, and in 1961, I joined NBC, where I spent the following almost nine years assigned to the Diplomatic Corps and for three years in between, as the London Bureau Chief.

Q During the course of your career in journalism, have you won awards or prizes?

A Yes, I have. I won the George Foster Peabody Award which is, I guess, the most prestigious award in broadcasting. I would think it was 1969, for work in '68. There is always a year's lag between the time you do the work and the time you [5] get the award.

That was for radio news reporting, and the same year, 1969, and also in 1970, I won an award from the Overseas Press Club for the best interpretation of International News in the broadcast field.

Q Have you written and published any books?

A Yes, I have. I published a book in 1966, called "The Missile Crisis," published by Lippincott, which was a fairly definitive study of the Cuban missile crisis of 1962.

In 1971, I published, jointly with my former competitor, Bob Marvin Kalb, a book called "Roots of Involvement" which was an effort to trace the American involvement in the Far East, from the beginning of the Republic, through Viet Nam, and now I am working on

Q The School of Journalism is a graduate school?

A It is.

Q How many students are there in the present class?

A The last count was 127, regular Masters candidates.

Q How many applications did you receive last year from students?

A Close to 900.

Q Will you name some of the men of the faculty at Columbia School of Journalism?

[6] A I would be happy to. The full-time faculty includes a number of men, very prominent in journalism. For example, Fred W. Friendly, former President of CBS News, who is the Edward R. Murrow professor of Broadcast Journalism.

Norman Isaacs, who has the title of Editor in Residence. He was, until recently, the Executive Editor of the Louisville Courier-Journal and Times.

Professor Penn Kimball, who is a rather well-known scholar in the field of political science and journalism.

John Hohenberg who is a rather renowned teacher and writer on journalism matters.

That will do. I could give you ten more.

Q Are there any people now working in journalism, some prominent graduates of the Columbia Journalism School?

A Yes, there are a good many. Our school is fortunate on the whole, in turning out people who tend to rise to the top of their profession, and if I had to name any current people, I mean people who are well known in the field today, I suppose I would have to include Hugh Simmons, the Managing Editor of the Washington Post, and A. L. Otten, who is the Washington Bureau Chief of the Wall Street Journal.

Flora Lewis, the Paris Bureau Chief of the New York Times.

[7] George Hermann of CBS News, Alice Townsend of CBS News—a fair number of people in all the networks but most of those I mentioned were my contemporaries, classmates, and so forth. I don't think I could give a complete catalogue.

Q That is fine.

A Oh, and the late Marguerite Higgins. She was a classmate of mine too.

Q In making the decision that you made, about four years ago, to leave NBC and assume your present post as Dean of the Columbia Journalism School, did the school's reputation have any bearing on your decision?

A It most assuredly did. The school's reputation is one moreover, that I, as a graduate, was concerned about maintaining, and that reputation on the whole is an excellent one.

Clearly. I think also there was at stake, the matter of loyalty of an alumnus toward the institution that helped to make him.

**Q** Is there such a thing as ranking in journalism schools?

**A** There is. I don't take much stock in it myself, but I think if you ask knowledgeable people in the field, they will tell you that Columbia has been one of the best institutions of its kind, in that it does enjoy a preeminent reputation, both nationally and internationally.

[8] **Q** Is there anything distinctive about the curriculum at the Columbia Journalism School?

**A** I think so. I think there are two elements there. One is the fact that we are in New York City, and that we are able to use the streets and courts and the City Hall, and all the other institutions of New York City, as a laboratory.

We send our students out on assignments and there they run into all the problems that a professional journalist has to do, in trying to get the truth, or as close an approximation to it as they can, everyday.

That, plus the fact that our school is, I think, fairly well known, as being very professionally oriented, rather than theoretically oriented.

**Q** What degree is conferred by the Columbia School of Journalism?

**A** They receive Master of Science in Journalism.

**Q** How long does it take to acquire that?

**A** One academic year with a very intensive program.

**Q** What emphasis, if any, is placed in the curriculum on newspaper gathering techniques?

**A** I think you have summed up the curriculum, in mentioning news gathering techniques. I think there are two main news gathering techniques and also the writing, and that is [9] the presentation—the effective presentation—of the news you have gathered, but news gathering is a very important part of it. In fact, our central-core curriculum consists of a variety of courses under the overall headline, The Media In Society, but known, less formally and more accurately as reporting and writing.

**Q** What emphasis, if any, is placed upon interviewing?

A A great deal—the interview is clearly the fundamental method of reaching out to people who have information, in getting from them that information, so that you, in turn, may then communicate to a larger audience.

Q Are students instructed, or encouraged to use the interview process, news gathering techniques?

A Yes, I believe that is a bit of an understatement. The interview, the direct face-to-face meeting with a person, who is either involved in a news-making situation or has been the most direct witness to it, is, we feel, indispensable, and we instruct our students to settle for nothing less.

Now there are cases obviously in which you don't always get to the man who was there but, in that case, we always advise people to inject into a copy a note of caution, if the material is being filtered through another person, attributed to that other person.

[10] Q You make it clear—

A That you can't vouch for this, on the basis of your own observations, and your own contacts with the source.

Q Is that the old caveat you see in the newspapers that Mr. Smith could not be reached for comment? Is that what you are referring to?

A Not referring merely to that—I am referring to a situation, unhappily there have been cases of this kind, in which a source, generally a spokesman for an Association, or sometimes the Government, or the City of New York, or what have you, tells a reporter something that frequently turns out to be something less than the truth. I have had that experience repeatedly in Washington, D. C. and elsewhere. The official spokesman who frequently—not frequently, because they want to lie, but because they are told to or because they don't know enough about what actually happened to be able to answer the question on their own, authority of their own knowledge.

Q Is it because of that situation that students are advised to make clear the source of their story?

A To make clear, if the source is not, in fact, the person most directly affected, to identify the source, so the reader is not misled.

**Q** Has it been your experience, as a working journalist, [11] that the accurate and effective reporting of news has a critical dependency on the opportunity for face-to-face interviews?

**A** I would say so, in most cases, yes. There is a great deal that a skillful reporter gets out of a face-to-face meeting with a source, that would not be available by any other means than the direct face-to-face meeting.

I can think of any number of cases in which the words uttered by a person in this situation may read one way in cold print, but may read somewhat differently, when the reporter is able to say, "Well, at the moment, the man said this, there was a particular expression on his face or tone of his voice". I think, if you filter those things out, you tend to get a less accurate and less complete account of what has been reported.

**Q** Can you recount, from your own experience, any particular incident where the opportunity for face-to-face interview was important in the development of a story?

**A** I can think of a good example. I tried to sort out and see what is the best example I can cite. Let me cite one that goes back quite a long way.

In 1956, '57 and '58, I was with the New York Times in Eastern Europe and working in what were essentially dicta- [12] torial regimes, calling themselves Communists, in Yugoslavia, Poland and Czechoslovakia, and it was perfectly obvious that if you were to content yourself with what an official spokesman would tell you, in a public place, that is, at a conference or in any kind of formal announcement, you would not only be misleading yourself but misleading your readers about what, in fact, was happening.

Even in that situation, where you had a fairly active secret police spying not only on you, the foreigner, but on the officials of the Government concerned, the face-to-face contact became all the more important.

I can recall for example, the flurry that arose, I think in 1957, between the Government of Yugoslavia and the government of the United States, because the United States Government perceived, or thought it perceived that the Yugoslavs who had broken with the Russians were



about to cement their old alliance with the Russians again, and it turned out not to be true, but people were leaping to conclusions on both sides of the water and I happily was one of those journalists who did not leap to that broad conclusion and that was based largely on the fact that there were at least two people in the Yugoslav Government who were willing to talk very frankly to me about what was actually happening, as [13] against what the newspapers said was happening, but always on a one-to-one basis. They would not do it in public, as part of a public spectacle, and this meant sometimes going for a walk in the park together or going to somebody's apartment and turning on a shower, and talking over the sound of the shower—that type of thing, but I am quite confident that I could not have gotten the information I did from these people except on that—except on face-to-face encounter.

Q Dean Abel, I will read to you two sentences from a brief filed by the Government, in a case in the Court of Appeals. You may read along from that excerpt and after reading this in the record, I will ask you some questions based upon it.

A May I just read over this copy?

Q Surely.

These two sentences appear on pages 25 and 26 of the Government's brief in the Court of Appeals. They read as follows:

"The lack of any 'abridgement' of 'the freedom of the press' is underscored by the fact that the Bureau has carefully provided for a comprehensive system of reasonable alternatives under which the press has full opportunity to inspect prisons and to learn about [14] and report on prison conditions and prisoners' grievance. Thus, under the Bureau's Policy Statement, press representatives may visit, inspect and photograph federal prisons; inmates are permitted to directly inform press representatives of prison conditions and prisoners' grievances through sealed, un-inspected mail, written and delivered promptly to any press representatives; press representatives are per-

mitted to initiate correspondence with particular inmates or to follow-up on mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action; and prison officials are required to 'give all possible assistance' to press representatives 'in providing background and specific reports on inmate complaints.'

Dean Abel, my questions are these: If a student at The Columbia School of Journalism was assigned to do a story on prison conditions or prisoner's grievances, would you be satisfied with his performance if he pursued only the sources listed by the Government?

A I would not.

Q Why is that, sir?

[15] A Because it seems to me that none of what the Government here has chosen to call reasonable alternatives seems like a reasonable program to a journalist or to a prisoner as it does to the administrators of the prison.

We have had enough cases, it seems to me, over the years, certainly an abundance of cases, in which prisoner's grievances are not generally made known until after fairly serious trouble has developed in an overt way.

This suggests to me that if this system, in fact, is supposed to operate, it is not operating as well as it should. Moreover, it would seem to me that, particularly on the matter of correspondence between press representatives and inmates, as described here, I can see—it seems to me a fairly simple situation in which a prisoner, knowing that the correspondence is going to be looked at by a third party, would, to a degree—well he would have to take that into account in writing his letter.

I can see a potential chilling or intimidating effect, so that I think if you are talking about a student's writing, I would want to be satisfied that he made efforts to establish direct contact on a face-to-face basis, with the people concerned.



Q If his assignment included a story on prisoner [16] grievances, would face-to-face contact be with the prisoners having the grievances?

A I would think so. I wouldn't want it filtered through a third party.

Q Have you had any experience, Dean Abel, in writing about prisons, during your career?

A My experience there is very limited. I think I once covered some trouble, many years ago at a penitentiary in Michigan, Jackson, Michigan, but that was a long time ago. My recollection of the details is a little foggy, at this point. I would argue however, that the position of a prisoner in an institution of this kind is not all that different from a citizen of a totalitarian country, which is one place I have had quite a lot of experience.

MR. KATZ: I object to the answer as not being responsive to the question.

BY MR. WILSON:

Q Based on your experience, do you have any reason to believe that the gathering of news from a prison should be any different from gathering news from other sources?

A I think the essential principle that I would stick to here is that the journalist ought to try for direct personal contact with the prisoner. Obviously we are talking about a [17] hypothetical, but with the prisoner whose story he is trying to tell.

Q If you wish to do a story on prisoner's grievances or prison conditions, would you find adequate those sources of information?

A Let me run over them again. It seems to me first, the business of visiting, inspecting, and photographing federal prisons—I am glad that provision is there.

We have all however, I think, as working journalists seen situations in which, when an outside visitor appears, whether he is in an Army camp or a prison or wherever, he tends to see what is shown to him, and what is shown to him can, in certain circumstances, be something less than a true picture of the whole institution.

On the matter of mail, I would find written communication from the prisoner, while conceivably of some value, in alerting one to a situation, on the whole, I would find that only of supplementary value to the face-to-face meeting, for the man who wrote the letter.

The reason for that being that, for one thing, a great many people are rather more eloquent and reveal more in face-to-face conversation, than they do in writing. Obviously we are talking again about hypothetical cases. I can see [18] problems of literacy, with low capacity for self expression, on the part of some prisoners. I have heard of cases in which what seemed to be very eloquent and forceful letters coming from prisoners, but it frequently turned out, I believe, that those were principally by fellow prisoners who had more facility with the language, so you again get this inclusion of a third party into what I think ideally should be a one to one relationship.

So that, in short, no, I would not be satisfied with those means.

**Q** Why would you not find information provided by the prison authorities adequate for your purposes?

**A** Essentially because I am unwilling—as I hope all journalists are unwilling—to abandon their own critical judgments, in favor of what any authority chooses to tell you, at any given moment.

I have had ample experience with authorities, very highly placed authorities, telling journalists what it suits them to tell. It sometimes is a fraction of the truth. It sometimes is a total lie.

I happened, on a particular Saturday afternoon, in 1960, to be in the State Department Press Room when a spokesman for the Department of State came downstairs and told us [19] that the two U-2 planes that the Russians had shot down—they claimed had never been over Soviet territory or, if inside, it was a change perhaps of the wind having blown it across.

From my knowing the man who made the statement, my guess is that was all he knew and that is what he told to us. What he was told to say was a lie as indeed President Eisenhower was forced to acknowledge, in rath-

er humiliating circumstances at a Summit conference in Paris in June or May of 1960.

So the fact that an official agency says something doesn't make it true, and I think the press is frequently doing a disservice when it simply reports as truth what an official of an agency said. There are many more examples that I could cite.

MR. WILSON: I have no further questions.

### EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MR. KATZ:

Q Dean Abel, just for clarity of the record, except for the one instance that you mentioned in Michigan, many years ago, you have not had any personal experience in covering prison matters.

A That is correct.

[20] Q You have never, of course, run a prison or worked in a prison.

A No, I would want the record to show that, nor have I ever been an inmate.

Q You yourself have never interviewed a prisoner?

A No, I have not.

Q Do you have any personal knowledge of the problems which face those who are charged with running prisons?

A I am familiar with some of the things that they have said about their problems, but I have not—not having run a prison myself, I have no personal knowledge.

Q Mr. Wilson, earlier in your direct examination there was read to you the policy of the Federal Bureau of Prisons, respecting contact between the media and the Federal institutions and the inmates therein.

Now you would not say, would you, that this amounts to a blackout on news, related to the prison, would you?

A No, I would not. I would, however, say it amounts to less than total access to the prisoners, their complaints and grievances, in my judgment.

**Q** This is only because of the reason that personal interviews with the inmates are prohibited?

**A** No, I think if you go back over my answer, in answer to one or two questions Mr. Wilson posed, I think you will [21] find that I did put a lot of stress on personal interviews with prisoners, but I also made the point that, when the press is invited into an institution of that kind, it tends to see what the prison authorities want it to see.

**Q** If I were to tell you, Mr. Abel, that under the policy of the Bureau of Prisons, a newsman who visited a prison would be permitted to tour and visit any portion of the prison that he desired, would you change your position?

**A** I am not sure I would because I also have had some experience with a gap between policy and reality, not in the Bureau of Prisons, but in a great many other institutions.

**Q** But assuming as a fact, for the purpose of the present discussion, that this were the case, would you change your position?

**A** I would still feel that access to the prisoner who has a story to tell is an indispensable part of the job of keeping the public informed about what is happening in a public institution.

**Q** Mr. Abel, when you described your reaction to the Bureau of Prisons' policy, I believe you also indicated you felt that the value of outgoing correspondence from inmates was limited, because of the fact that this correspondence was read by third parties.

[22] Now, if I were to tell you that the policy of the Bureau of Prisons is that outgoing correspondence from inmates is sent by the inmates sealed in envelopes which are not read or inspected—

**A** I read that. I think there may be a misunderstanding. I was referring—there is, I believe I can quote it here directly from the policy statement:

Press representatives are permitted to initiate correspondence with particular inmates or to follow up on mail received from inmates by writing to particular in-

mates in letters which are inspected only for contraband or matters in citing illegal action.

Q You are referring to in-coming correspondence?

A Yes.

Q I believe that, in your earlier discussion, on direct examination, it appeared to me you had the impression that the same was true, with respect to outgoing mail.

A That was not my impression. I think there was a misunderstanding. I have read the statement and I understand it.

Q Do you feel that, under those circumstances, the policy under which prisoners can get outgoing correspondence without censorship of any kind is a valuable source?

[23] A Since we are talking of hypotheticals, you are asking me to pass judgment on things I have not seen in operation. I am being hypothetical for the moment. If I were a journalist who received a letter, unsolicited from an inmate of such an institution in which he made whatever complaint he had to make, I would think that, before rushing into print with that information, I would want to go to the prison and ask to see the prisoner and learn more than perhaps the prisoner himself provided in the letter, by way of verifying and investigating the matter further. That is what a responsible journalist would do.

If he simply received a letter in the mail from a person he had never seen and had no way of identifying him, I think that would, at best, serve as a trigger to propel him into investigating the situation which he would have to do, I think, by more direct means than simply reading the letter.

Q But this purpose can be served, at least to some extent, by return correspondence and a visit to the institution, can it not?

A In fact, I suggested a visit to the institution, but for me an important part of the visit would be to talk to the man who wrote the letter.

Q Mr. Abel, do you have an opinion, based on expertise, [24] respecting whether press attention given to demonstrations, protests and so forth, has the effect of

encouraging such protests or aggravates it or prolongs them?

A That is a fairly frequent argument which is made nowadays. I am not one who believes demonstrations arise only or even primarily for the purpose of attracting the media attention, though I would note that, in this rather publicity-oriented country of ours, is ruled out in certain cases. I am not sure what the relevance of that is. At this point, however, this is a matter that is debated hotly.

Do you want to sharpen your question just a little bit? I didn't know I came here to testify about public demonstrations.

Q Well, do you know, in your experience, of any situation in which a public demonstration or protest has been aggravated or prolonged, or even initiated by the fact that it was expected that extensive media coverages would be given to it?

A I can't cite a particular demonstration in which I knew this to be the case. I am inclined to believe—I think if you read Jerry Rubin's book, you will find he says quite flatly that certain of the yippy or hippy or whatever they were, demonstrations, in various places were done with [25] an eye to getting media attention.

That incidentally does not seem to be a very powerful argument for compelling the press not to cover demonstrations.

Q I show you a copy of an editorial which appeared in the Washington Post which, as you know, is the Plaintiff's newspaper in this case. This is dated Tuesday, November 14, 1972, and in particular I refer you to the second of the two editorials which says, "To curb hijackers, improve ties with Havana."

It states, "The media must ask themselves whether, by their play-by-play reporting of the 29-hour, 4,000-mile adventure, they did not scare or embolden the hijackers to act more rashly than they otherwise might. It seems a miracle no one was killed."

My question to you is whether you agree with this statement?

A I do not. It seems to me a foolish statement. The reason it seems to me foolish is that I would find it very hard to conceive of the rather desperate men, in this desperate situation, taking time from holding guns pointed at the heads of pilots, to read the newspapers and be emboldened by the news.

[26] Q Let me ask you another question on basically the same subject.

Do you think that extensive press coverage given to, say, this particular hijacking might, in a way, encourage other persons to do the same thing?

A Well, that, too, is a familiar argument that I think various journalists answer in various ways. I see no way, frankly, to solve the problem in this country, by turning a blind eye to this situation which is where you are driving me, at this point. It is a very popular point of view, a point of view that certain unpleasant realities will disappear if we don't report their existence. I cannot accept that as an answer. This has nothing to do with this particular case, but, for example, in recent weeks and months, in New York City, where I live, there has been a great deal of attention in the press to corruption among public officials and policemen. I would find it very hard to accept the argument that the press ought not to report that kind of thing, lest we encourage more corruption. That seems to be the logic of your statement.

Q I don't necessarily agree with the analogy. Let me ask you this question:

There have been, I think, many stories written [27] about these hijackers, where considerable space was devoted to specific measures taken by the authorities to frustrate the hijackers. Now, don't you feel that this type of publicity could be detrimental, in that future hijackers could become aware of the security measures and thereby frustrate the authorities?

A That is conceivable, but as I remember it, the publicity, attendant upon—the publicity you mentioned about various measures was essentially put out by the Government to show the public what a good job it was doing in protecting them. The press merely reported



what was said by FAA or various airlines about measures that were being taken.

Q Do you know, of your personal knowledge, that that is the only source for that type of stories?

A Well, I can't vouch for every story that has been published. I read a fair number which quoted officials of the Federal Aviation Administration about this or that measure. The sky marshals were announced by the President of the United States himself.

Q But the Government, for example, did not give out specific information with respect to particular criteria which are employed in these measures which they used to determine the profile of the typical hijacker, and that sort of thing. [28] if this type of information came to the knowledge of the press, you don't believe a public service would be rendered by publishing that particular type of information?

A You are talking about information of which I am not aware, so I would rather not give you a judgment as to whether it would be in the public interest or not. I have not seen the information.

Q Are you personally familiar with the role of the media in the incident which occurred at the New York State Prison at Attica in May, 1972.

A I am fairly familiar with it. I wasn't there myself. I have talked to a fair number of journalists who were there, and prison officials who were there and to Dean McKay, and I have read his report. Yes, I am familiar in a general way with it.

Q You have read the report of the McKay Commission?

A Yes, in fact we had Dean McKay and his chief—whatever the title was, the chief legal officer of the Commission at the school, answering questions of students and faculty about the report of the whole affair.

Q This was Mr. Lyman?

A Yes.

Q Are you familiar with certain contents of the report [29] of the Attica Commission in which the role of the media, in connection with the protest which occurred there is discussed?



A In general terms, yes. I may not remember every detail. If you want to refresh my memory, please do.

Q If I may read to you from page 211 of the Bantam Books edition of the Attica Official's Report, it states:

"Prisons have traditionally been off limits to the press. The admission of newspapermen and television cameras to D yard, not only provided inmates with an unparalleled opportunity to tell the public about prison conditions, but gave them a sense of importance, dignity and power. Inmates realized that they could command national attention only as long as they kept the hostages and that, once the uprising ended, they would return to the status of forgotten men, subject to all the humiliations of prison life. That feeling, coupled with this fear of reprisals and mistrust of the State, made it almost impossible to persuade them to give up the limelight and return to anonymity."

Do you have an opinion on that statement?

A I don't have a very strong opinion about it. It seems to me one has to ask one's self, as I do: The limelight came to those people only after Attica was, so to speak, aflame.

[30] I don't see how the press could or should have been excluded, if that is what you are advocating. Once the rebellion or insurrection started, it became a rather large public event of appreciable public interest.

Q But it appears, does it not, from that fact-finding commission, that the presence and role of the media, during the disturbance, had the effect of encouraging the inmates to continue to prolong their insurrection?

A That is what they said in the report, or the passage that you read to me. I can find fault, if I may follow up, with the performance of the press at Attica, in rather different ways which may interest you.

There was a fair amount of totally misleading information published in some of the most reputable news media in the country. I mean the New York Times, for example, in the celebrated story that throats were cut.

Q This was after the disturbance was terminated?

A No, I believe it was even before the termination, but I am willing to—that I don't think has any bearing on

the point I set out to make and that point is that the press, because it lacked direct access, for the most part, to the prisoners, or that particular section of the yard where they were, was going on the say-so officials at the prison who [31] put out what turned out to be a completely inaccurate story about people having their throats cut and people being emasculated, and all the rest of it.

This was reported in good faith by papers as reliable as the New York Times, and it turned out to be a total lie.

Now that lie was not intended by the press. It was a lie put out, without the possibility of verifying it by members of the prison staff and Commissioner Oswald's staff, and I think that was a rather damaging lie and a rather dangerous lie. Now all of this may have no very direct bearing on the situation you are talking about in presumably a prison where there is no riot in progress, at least that was my impression of what is involved in this case, but it does seem to me to strengthen very greatly the argument, the need for the press to be skeptical about what is received second or third or fourth or fifth-hand from officials, as distinguished from the Department of Corrections of New York State.

Q But you do concede, do you not, that the presence of the media at Attica tended to fan the flames, so to speak?

MR. WILSON: I object to this attempt to characterize Dean Abel's testimony today.

[32] THE WITNESS: I don't recall having conceded any such thing. No, I do not concede anything. That is a rather inflammatory way to put it.

BY MR. KATZ:

Q You do not agree with the findings of the Commission?

A You inquired about the findings of the Commission earlier and I think I commented on it.

Q Do you believe it to be a duty of a newsman, receiving an unfavorable allegation against the administration of a prison, to attempt to get the other side of the story, that is, to talk to the officials in charge?

A I have already said that if I were in a situation in which I received a letter with such allegations, I would

not rush into print with that letter alone. I would go to the prison and talk to the man who wrote the letter and try to investigate, by talking to prison officials and seeing for myself, as best as I was allowed to see, what the substance of the complaint was. I would try to check it. That is what a responsible journalist does.

Q Do you know whether this practice is followed by all journalists?

A I would be a damned fool if I said that every journalist uses the highest standards of his profession, [33] just as I would be an equally damned fool if I suggested that every lawyer and every doctor in every state use the same high standards of their professions. That would be to deny malpractice, and it exists in your profession and mine and the medical profession and every other profession I can think of. The fact that certain people who are performing in those fields do not hew to the highest standards is regrettable, but it does not, it seems to me, invalidate the efforts of those who do hew to high standards and it has been my own professional belief, from the time I came to be involved in this business, that one must hew to the very highest possible standards and, as the Dean of the School, I happen to head, I can assure you that this is a very important part of teaching.

Q Would you feel there would be any circumstances in which prison officials might be justified in prohibiting personal interviews, with particular inmates?

MR. WILSON: I object on the grounds he has already testified that he has no experience in administering prisons.

MR. KATZ: You may answer.

THE WITNESS: I really don't know. I don't know enough about the range of the situations that might arise, which might seem to be, to some, to justify this sort of [34] thing. I have no doubt, for example, that if there was an insurrection in progress at a prison, that the automatic recourse of the warden or whoever was in charge would be to cut off visits by journalists and others, but, lacking any specific details of a particular case, I find it hard to answer that question.

MR. KATZ: That is all I have.

MR. WILSON: No further questions.

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(By stipulation of counsel, in the presence of the witness, reading and signature waived.)

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(Whereupon, the deposition was concluded at 12:00 o'clock Noon.)

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## [35] CERTIFICATE OF NOTARY PUBLIC

I, Eileen King, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was take by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

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Notary Public in and for  
the District of Columbia

My Commission Expires:  
September 1, 1977.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action 478-72

THE WASHINGTON POST COMPANY *et al.*, PLAINTIFFS,

vs.

RICARD D. KLEINIENST, Acting Attorney General  
of the United States,

and

NORMAN A. CARLSON, Director of the United States  
Bureau of Prisons, DEFENDANTS

Washington, D. C.

Wednesday, November 15, 1972

Deposition of

JOHN W. MACHACEK,

a witness, called for examination by counsel for the plaintiffs, pursuant to notice, copy of which is attached to the court copy of this deposition, at the offices of Williams, Connolly and Califano, 1000 Hill Building, 839 - 17th Street, N.W., Washington, [2] D. C., by Charles H. Wilson, Jr., Esquire, before Eileen King, a Notary Public in and for the District of Columbia, beginning at 10:00 o'clock a.m., when were present on behalf of the respective parties:

For the Plaintiffs:

WILLIAMS, CONNOLLY & CALIFANO

By: CHARLES H. WILSON, JR., ESQUIRE

1000 Hill Building

839 - 17th Street, N.W.

Washington, D. C.

For the Defendants:

MICHAEL A. KATZ, ESQUIRE

Assistant United States Attorney

United States Courthouse

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## INDEX

Witness:	Examination by Counsel for the	
	Plaintiffs	Defendants
JOHN W. MACHACEK	3	23
	29	31
	34	36

## EXHIBITS

<i>Plaintiffs' Exhibits Nos.</i>	<i>For Iden.</i>
1. Photostatic copy of Times-Union	6
1. Photostatic copy of Times-Union	10
<i>Defendants' Exhibit No.</i>	
1. Editorial from Washington Post	28

[3] WHEREUPON,

JOHN W. MACHACEK,

the witness, was called for examination by counsel for the plaintiffs and, having been first duly sworn by the Notary Public, was examined and testified as follows:

## EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. WILSON:

- Q Will you state your name for the record?  
 A John W. Machacek.  
 Q Where do you reside?  
 A Rochester, New York.  
 Q At what address?  
 A 451 Woodbine Avenue.  
 Q Where are you employed?  
 A Rochester Times-Union.  
 Q In what capacity?  
 A As a news reporter.  
 Q How long have you been employed by the Rochester Times-Union?  
 A This is my sixth year.



Q Sixth? You would have joined the newspaper in 1966?

A August of 1967.

Q Did you have any previous newspaper experience, [4] before joining the Times-Union?

A Yes, I have. I previously worked for the Milwaukee Sentinel for a period of one year, 1962 to 1963, and later for the Albany Knickerbocker News from 1964 to 1967.

Q Mr. Machacek, have you received any award or prizes for your work as a journalist?

A Yes, I received the 1972 Pulitzer Prize for spot news reporting, and that was in relationship to the Attica Prison riot.

Q During the course of you news career, which spans approximately ten years, have you developed any particular specialties?

A For the Albany paper and the Rochester papers, I have covered education, ranging from the State Board of Regents in New York, down to city school districts.

Q Are there any other specialties?

A I have also covered transportation problems in Rochester, some labor news, and town government or suburban governments.

Q You mentioned that you won your Pulitzer Prize for covering the Attica Prison riots. Apart from that, have you had any other experience in covering prisons?

A No.

[5] Q Would you describe for me, if you will, the circumstances of your coverage of the Attica Prison riots, that led to the Pulitzer Prize?

A First of all, I was a co-winner of the Prize, and the other man who shared the award was Richard Cooper, also with the Rochester Times-Union staff.

He received a tip the morning following the assault at the prison, the take-over of the prison, by the State Troopers, that the hostages, the nine guard hostages—

MR. KATZ: I object to that as hearsay.

BY MR. WILSON:

Q Mr. Machacek, will you describe your role in the coverage of that story? First of all, were you at the scene?

A No, I was not at the scene.

Q Did the Rochester Times-Union have reporters at the scene at Attica?

A Yes, we had at least a dozen reporters there, around the clock.

Q Now will you summarize briefly, if you can, what it was that you had a role in reporting, that led to the Pulitzer Prize?

A I was sent by my City Editor out to the Monroe County Medical Examiner's Office to confirm a tip that Mr. Cooper had [6] regarding the cause of death of the nine guard hostages.

Cooper had received word from a civilian supervisor, within the Monroe County Medical Examiner's Office.

MR. KATZ: I object to what he was told.

(Discussion off the record.)

MR. WILSON: Will you mark this Plaintiffs' Exhibit No. 1?

(Photostatic copy of a page from "The Times-Union" dated Tuesday Evening, May 2, 1972, was marked for identification Plaintiffs' Exhibit No. 1.)

BY MR. WILSON:

Q I hand you Plaintiffs' Exhibit No. 1 for identification and ask you if you can identify it.

A This is a copy of a page from the Rochester Times-Union, with the stories describing how I won the Pulitzer Prize.

Q What is the date of that?

A The date is May 2, 1972.

Q What you hold is a photostat of two pages of that issue of the Rochester Times-Union. Is that correct?

A The photostat pages are of Page 1 and Page 10.

Q Those pages contain other stories, other than the story about the Pulitzer Prize?

[7] A Right.

Q I call your attention to a story in Columns 2 through 4 of Page 1 of Plaintiffs' Exhibit No. 1 for identification, and ask you if you can identify that, please?

A That story describes how two Times-Union reporters won the Pulitzer Prize.

Q Are you familiar with that story and its contents?

A Yes, I am.

Q Is it your recollection that that story accurately reports the circumstances under which you and Mr. Cooper won the Pulitzer Prize for spot news reporting?

A It does.

Q You were saying, before we discussed this document, that you had been assigned by the Times-Union to check out a tip. Is that correct?

A That is correct.

Q What was the substance of the tip, as it was conveyed to you, and who conveyed it to you?

A The substance of the tip—

MR. KATZ: I object to this, for the record.

BY MR. WILSON:

Q You may answer.

A The substance of the tip was that the nine guard [8] hostages had died of gunshot wounds and not slit throats, as had previously been reported by prison officials.

Q From whom did you get the tip?

A I was briefed by my City Editor, Phil Currie.

Q What did you do, after talking to Mr. Currie?

A Mr. Currie dispatched me to the Monroe County Medical Examiner's Office, where the bodies of the hostages had been brought for autopsy. His instructions to me were to stick there until I had talked directly with the Monroe County Medical Examiner, Dr. Edland, who was performing the autopsies, and my further instructions were to verify that fact or that tip, that we had received via a civilian supervisor, within Edland's office.

Q Did you, in fact, go to the hospital?

A The hospital?

Q Or the Coroner's Office?

A Yes, it was the Medical Examiner's Office.

Q You went to that office?

A Yes.

Q What did you do there?

A Once inside the Medical Examiner's Office, there was about a half hour wait, before I had a chance to see Dr. Edland. When I did see him, he had just completed more of the [9] autopsies and was taking a lunch break. I told him what we had heard and asked him to confirm that report and he did.

Q What did he tell you?

MR. KATZ: I object to this as hearsay.

THE WITNESS: I asked Dr. Edland if it was true that the hostages had died of gunshot wounds and not slit throats and he said, "Yes, that is correct". And following that, I proceeded to ask him questions as to the angle of the gunshot wounds, the caliber of the bullets and he answered to the best of his ability, at that point.

BY MR. WILSON:

Q Following your conversation with Dr. Edland, what did you do?

A I then went to a nearby phone and called my City Desk and informed them what Dr. Edland had said, and proceeded to dictate several paragraphs of direct quotations from Dr. Edland.

Q What was the significance of the information you had received from Dr. Edland, with respect to the stories being carried by the Rochester Times-Union, on this incident?

A Well, the Rochester Times-Union is an afternoon paper in Rochester, and on Monday, the day of the assault, the paper had already gone to bed and, by the time the Corrections [10] Department officials and prison officials took a group from the press on a tour of the prison, after the assault, and it was during that tour that at least two Corrections Department officials either reported verbally or by gesture, that the hostages had died of slit throats, and the following day the New York City morning newspapers carried stories to that effect, either direct quotations from the prison officials or from

State Troopers who said that they had witnessed throats being slashed, during the assault.

Q Did the Rochester Times-Union carry those stories?

A In it's earlier Tuesday morning editions, the Rochester Times-Union was carrying wire service reports of the causes of death.

Q Which were what?

A I believe they were Associated Press, and the Associated Press had attributed them to prison officials.

Q The Associated Press reports were what, with respect to how the hostages had died?

A By slit throats.

(Discussion off the record.)

(Photostatic copy of three pages from "The Times-Union", dated September 14, 1971, was marked for identification Plaintiffs' Exhibit No. 2.)

[11] BY MR. WILSON:

Q I show you Plaintiffs' Exhibit No. 2 and ask you if you can identify it?

A It is Page 1 and Page 18 of the first section of the Rochester Times-Union, dated Tuesday September 14, 1971.

MR. KATZ: For the record, I would like to enter an objection, at this point, a continuing one, with respect to the relevance of this entire matter of what went on in Attica. I believe it has no relevance to the issues in this case.

BY MR. WILSON:

Q What is the lead story on the front page of the Rochester Times-Union which is Plaintiffs' Exhibit No. 2?

A The lead story is headlined "Gunshots, Not Knives, Killed Hostages" and the lead paragraph in the story reports that autopsies show that hostages who died in police assault on the prison died of gunshot wounds and not cut throats, and that fact was reported by the Monroe County Medical Examiner's who had performed the autopsies.

Q Does that story that you have just referred to reflect the information you obtained from Dr. Edland?

A Yes, it does.

Q Did you write that story, physically sit down and type at a typewriter and write the story?

[12] A No, I did not.

Q By what process was it written?

A It was written by a re-write man who was handling reports from all of the reporters involved in the Attica coverage. Being an afternoon newspaper, with early morning deadlines, this is a normal procedure for us to follow, on breaking stories.

Q And is that the story the basis of your winning the Pulitzer Prize?

A Yes, it is.

Q Just to clarify this now, what precisely was it about that story that led to the Pulitzer Prize award to you? Let me rephrase that.

What was it about that story that stood out, in terms of coverage of the Attica riot?

A Well, it was the dramatic change of facts. Everybody from prison officials to State Troopers had been convinced, and had reported to the Press that the hostages had died of cut throats or slashed throats, and the Medical Examiner who performed the autopsies proved otherwise. It changed the whole course of the public's attitude toward the Attica situation.

Q Did other newspapers carry the reports of the autopsy?

A Yes, I believe they did because, after our story was [13] put in type in our paper, the Associated Press used those facts and wrote their own stories. As you know, the Associated Press feeds on all the rest of the papers, most of the rest of them.

Q What then was significant about your story, that led to the Pulitzer Prize?

A Excuse me?

Q Why then did your story win the Pulitzer Prize, if other papers carried the accurate story?

A Because we were the first to report it and we obtained the story several hours before Dr. Edland held his

press conference and reported to the press corps, covering the Attica riots virtually the same thing he had told us four hours earlier.

MR. KATZ: I object to the question and answer, unless he can say from personal knowledge, that he was informed that this was the reason why he received the Pulitzer Prize, from those who made the award.

BY MR. WILSON:

Q What was the category again, in which you won the Pulitzer Prize?

A The category was general spot news reporting.

Q It is true, isn't it, that there are several Pulitzer Prizes awarded for journalism each year?

A That is true.

[14] Q In several categories?

A Yes.

Q What is it that would distinguish the category in which you won the prize from other categories?

A Simply that it is reporting of a breaking news event or spot news event, under deadline pressure.

Q Did a citation, or anything in writing, go along with the prize you won?

A There was a citation.

Q Can you recall the content of that citation?

A Basically what I have just told you about, the nature of the award and the reasons for it.

Q Did that citation make any reference to the fact that your story was the first to report this piece of news?

A No.

Q It did not make reference to that fact?

A No, no.

Q But it is a category that deals with the coverage of breaking news under deadline pressure?

A Right.

Q And it recognizes the skill of reporters under those circumstances?

A That is right.

[15] Q In your ten years as working newsman, has it been your experience that the accurate and effective re-

porting of news has a critical dependency upon the opportunity for face-to-face interviews?

A Yes, it has. I can recall numerous times where face-to-face interviews have helped me build a rapport with the person I am interviewing. We were able to pursue a particular line of questioning or honing in on a particular point that we might not otherwise have received.

I can think of one particular experience when I was covering a long construction trades strike in Rochester, during the summer of 1969, and the Contractors' Association, which was very conscious of its public image, and striving hard to put forth its position before the public, had hired a public relations firm and, during the course of reporting that strike, I had dealings with the public relations man, assigned by that firm to the Contractors' Association.

Q Do you recall his name?

A Al Bruce.

Q Proceed.

A One day, he called me over the phone to say that he had an exclusive release for me, on some development in the strike, and that he wanted to come out to see me at my house [16] that night, and he did.

On inspecting the release, I saw that the contractors were charging the Plumbers' Union with failing to perform emergency work in a high rise apartment project for senior citizens. The project was partially completed and some senior citizens were living on some floors.

Q Were members of the Plumbers' Union on strike?

A Yes, they were. I did not immediately write the story. It was a Friday night, I believe, and I waited until Monday, when I spoke with an officer of the Plumbers' Union on the street, and I told him what the release contained and he was able to verify for me, during that face-to-face interview, that such was not the case, and so I did not write the story at all.

Q Was there any particular reason, in this instance, why you sought out the official of the Plumbers' Union?

A I wanted to get the other side of the story.

Q Was this unusual, in the way of your going about your job as a reporter?



A No, on strikes and anything else, the job of the reporter is to get a balanced picture of what happens, and if one side makes a charge against the other, it is our job to either get a reply or to verify it.

[17] Q You say this is a normal practice?

A Yes, it is.

Q Of the way you performed your duties?

A Yes.

Q You have described the situation in which the opportunity for face-to-face interview caused you not to publish a story that otherwise might have had a strong impact.

A That is right.

Q Have you had any experience where the opportunity for face-to-face interview would have produced some other effect?

A I am currently covering the school beat for Rochester Times-Union and recently I received a tip from a teacher that a particular school was in bad physical condition, including leaky roofs and that the leaks were so serious that, when it rained or during winter, when there was snow and ice packed up on the roof, the teachers had to bring in buckets to catch the water in the classrooms.

To follow up on that tip, I went out to—

Q Excuse me for a moment. Did you know the teacher personally, at the time you received that tip?

A No, I didn't.

Q Proceed.

[18] A To follow up on that tip, I went out to the school and met with the principal who took me on a tour of the building, and I asked him about the leaks and he said, "Yes" and he showed me where they were. He showed me other physical problems which the school had and, during that tour, I talked with two or three other teachers who also verified the problem, and then later, I talked with a parent who had a child in the school, and she painted a far worse picture than had been portrayed by the principal and the teachers.

Based on those interviews, I wrote a story, describing the problems of the school.

Q Would you have felt that you could have written a story, absent the interviews you conducted in the school incident you described?

A I couldn't have been sure, in my own mind, whether those facts were true or not, and not knowing the teacher, I just couldn't trust her description.

(Discussion off the record.)

BY MR. WILSON:

Q Mr. Machacek, I would like to read to you two sentences from the brief, filed by the Government in the Court of Appeals in this particular case, and after I read these two sentences, I would like to ask you some questions based on [19] them.

These two sentences appear on pages 25 and 26 of the typewritten brief, filed by the Government in the Court of Appeals in this case. They read as follows:

"The lack of any 'abridgement' of 'the freedom of the press' is underscored by the fact that the Bureau has carefully provided for a comprehensive system of reasonable alternatives under which the press has full opportunity to inspect prisons and to learn about and report on prison conditions and prisoners' grievances. Thus, under the Bureau's Policy Statement, press representatives may visit, inspect and photograph federal prisons; inmates are permitted to directly inform press representatives of prison conditions and prisoners' grievances through sealed, uninspected mail written and delivered promptly to any press representative; press representatives are permitted to initiate correspondence with particular inmates or to follow-up on mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action; and prison officials are required to 'give all possible assistance' to press representatives [20] 'in providing background and a specific report' on inmate complaints."

My question to you is this: If you were assigned by your City Editor to do a story on prison conditions or prisoners' grievances and those were the sources of information available to you, do you feel, based on your experiences as a reporter, you would be able to develop a fair and accurate account of prison conditions and prisoners' grievances?

MR. KATZ: I wish to enter an objection to the question. It is hypothetical. There has been no testimony given by the witness that he has actually conducted prison interviews, either at the Bureau of Prisons or elsewhere, or had any actual experience along these precise lines.

MR. WILSON: Your objection is noted.

THE WITNESS: I don't think I could. I would really feel that I had not achieved the complete story or gotten the whole story.

MR. WILSON: I assume your objection will follow through all these questions.

MR. KATZ: I would like a continuing objection.

BY MR. WILSON:

Q Why is that?

A If I were to do a story on prisoners' grievances, [21] I think I would want to talk to the individual prisoners in person, first of all to find out exactly what they mean by their grievances, but further to corroborate their report with other prisoners. It might be that that particular prisoner's grievances are not a prison-wide problem, and also, in talking with other prisoners, it is very possible to get leads on other problems that are occurring.

Q You are basing this answer on your ten years of experience as a working newsman. Is that correct?

A Yes.

Q Do you have any reason to think that circumstances under which you would develop a story relating to prisoners' grievances would be any different than stories you have covered—that you cover in your normal days work?

A I don't think so.

**Q** Why would not communications by correspondence with inmates be adequate to do the story, this hypothetical story that the City Editor assigned to you?

**A** First of all, there would be a time lag, in writing the questions and mailing them and then receiving the answer back, and if there were an actual face-to-face interview, you would be able to interrupt the answers in much the same way a lawyer does in a courtroom, to get into a particular point and [22] clarify it, or elaborate on certain points, and this just couldn't be done with any effectiveness, in correspondence.

**Q** Would it be relevant to you, whether you knew the inmate personally and not in terms of dealing by correspondence with him?

**A** That would probably help, but I still wouldn't be satisfied.

**Q** You are saying: even if you knew the inmate personally—

**A** I would still want to talk to him.

**Q** A face-to-face confrontation?

**A** Yes.

**Q** Why would not information, provided by prison officials, be adequate to write such a story?

**A** I think our experience at Attica is proof of that. Even after the Medical Examiner had reported his findings, a prison official, Corrections Department official, tried to find ways to dispute that finding.

**MR. KATZ:** I object to that.

**MR. WILSON:** On what grounds?

**MR. KATZ:** It is hearsay and characterization on the part of the witness.

[23] **BY MR. WILSON:**

**Q** You said that Corrections officials at Attica Prison continued to deny the reports on your story, even after the Coroner's report was available? On what do you base that statement?

**A** I believe those facts were reported by the McKay Commission, appointed by Governor Rockefeller, to make a complete investigation.

**Q** Have you read that report?

A I have read parts of it.

Q Which parts have you read?

A The parts concerning the assault and the aftermath.

MR. WILSON: I have no further questions.

# EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. KATZ:

Q So the record may be clear on this, you have never actually visited a prison?

A No.

Q You have never conducted an interview with an inmate of a prison?

A No.

Q Do you know if the newspaper by which you are employed has circulation within prisons—being sent into prisons?

[24] A I believe so.

Q Your only role in connection with the reportage of the Attica matter was related to your story in which you interviewed the Medical Examiner?

A Yes.

Q You are aware, are you not, that prisons are not open to the general public at large?

A I believe so.

Q Do you feel, as a newsman, that you should be permitted to have entry to such areas of the prison where the general public is not permitted to enter?

A Well, a prison is a public institution, although a limited-access public institution, and if there are problems or issues which affect the public, or which should be in the public interest to know, then I think that the press does have a right to enter the prison and investigate those problems.

Q Would you feel that there are any legitimate grounds or particular circumstances which would justify limiting your access to prisons or to interviewing inmates at any particular time?

MR. WILSON: I object to that question.

BY MR. KATZ:

Q You may answer.

[25] A Are you talking just about prisoner interviews, or all situations?

Q Take one step at a time. Let's say access to a penal institution generally, first.

A Could you rephrase the question, or repeat the question?

Q I will rephrase the question.

Would you acknowledge that there might be circumstances under which those in charge of a prison might be justified in prohibiting newspapers access to an institution at a particular time?

MR. WILSON: I will make a continuing objection.

THE WITNESS: There might be, but I think, even in the most extreme case, such as a prison riot, that the fact there was no—there was not even a press pool allowed inside the prison, during the assault, or even during the talks between the prison officials and the inmates led to the confusion in the aftermath of the assault. The public was simply not getting a balanced or a complete picture of what was happening inside that prison yard. The only reports that were being published at that time, were reports from prison officials, State Troopers and observers who had been inside the prison yard and the complete story, the mood of the place, was not captured by the [26] press. That is important in any story.

Q Have you ever requested an interview with an inmate at the penal institution?

A No, I haven't.

Q Do you have an opinion, respecting whether attention or coverage, given by the media to the activities of certain events or individuals, can ever influence, in any way, the outcome of those events?

MR. WILSON: I object. Objection.

THE WITNESS: It is possible, but I think that, by and large, the course of events is pretty well set or happens, as a situation develops.

BY MR. KATZ:

Q Has it ever been your experience that newspaper publicity, given to an individual, particularly a militant type of person, tends to magnify the importance of that individual in the community?

A Well, when I personally have seen such a case, or am covering such an individual, I take that into account and I try to put that individual in proper prospective.

I think one example offhand—there was a young black militant type in Rochester who had formed his own organization in the inner city, and he suddenly started attacking the city [27] school system, particularly schools in his area, and he would call me, at the drop of a hat, to say that he was going to hold a press conference and slam the principal of the school and ask that the white principal be removed and a black put in his place.

At one point, he told me he had the backing of a Council of black professionals who work in the community. On checking that out, I found that he didn't have such backing, and I simply ignored him after that, didn't go to his press conferences. If he did have something which checked out, it didn't receive much coverage.

Q Well, if we were to have the case of such an individual, whose activities were not covered by newspapers as circumspect as yours, in reporting his activities, do you feel that there is a possibility his influence could be greatly exaggerated?

MR. WILSON: Objection.

THE WITNESS: Yes, I would have to say so.

(Discussion off the record.)

MR. KATZ: I would like to have marked as Defendants' Exhibit No. 1, this editorial from the Washington Post of Tuesday November 14, 1972.

[28] (Editorial from The Washington Post, dated November 14, 1972 was marked for identification Defendants' Exhibit No. 1.)

BY MR. KATZ:

Q I would like to show you what has been marked as Defendants' Exhibit No. 1 for identification, and I direct your attention to the lower of the two editorials, on the subject, "To Curb Hijackers, Improve Ties With Havana" and this particular statement.

"The media must ask themselves whether, by their play-by-play reporting of the 29-hour, 4,000-mile adventure, they did not scare or embolden the hijackers to act more rashly than they otherwise might. It seems a miracle no one was killed."

My question to you is whether or not you agree with that statement?

A I think, that in the area of airplane hijacking, the press does have to evaluate how it has been covering them and see whether such coverage has had an effect on the actions of hijackers or has lead to further hijacking.

Q Do you feel that the same observations expressed in this editorial might apply equally to the Attica riots or militant prison inmates?

[29] MR. WILSON: I object. My objection is based on the same basis as your objection to one of my hypotheticals, on the ground that he has not had this experience.

THE WITNESS: Well it might, but the press has to employ the same safeguards in covering prisons as it would a hijacking. It has to constantly keep checking itself as to whether it is acting responsibly or not, but that is not to say that the press shouldn't be covering either event.

MR. KATZ: Thank you. I have no further questions.

MR. WILSON: I have just a couple.



FURTHER EXAMINATION BY COUNSEL  
FOR PLAINTIFFS

BY MR. WILSON:

Q Calling your attention to Defendants' Exhibit No. 1 for identification, the question asked by the Post is whether the media did not scare or embolden the hijackers to act more rashly than they otherwise might.

Now you answered, if I recall, that that might be the case. Is that correct?

A Yes.

Q Is that based on any knowledge that you had that the hijackers, referred to in that sentence, were aware of or had heard or seen press reports of their activities?

A No.

[30] Q Do you know whether the hijackers involved in this particular hijacking had heard the press reports or read press reports of their activities?

A I don't know that.

Q Mr. Katz asked you, and I am paraphrasing, but I think it is accurate, whether the course of the events could be influenced by the news coverage of those events and part of your response was that it was possible. What did you mean by that? It was a general question. What did you have in mind by your answer "it is possible"?

A Well, I guess I was thinking of my own experience in covering the school's racial troubles. It seems that no matter how hard we try to present a responsible and balanced and unemotional report, that there are some people—I would say a few people on both sides—who read things into those news stories that aren't there, and they are reading things there according to their own—based on their own prejudices—and as a result, they might make public statements, based on those understandings.

Q Was this what you had in mind, when you said, "It is possible"?

A Yes.

Q Was the word "possible" used with some deliberation, [31] or is it a certainty to you?

A No, I wouldn't say it is a certainty. I said "possibly" because an irresponsible press might generate that type of reaction to that type of event.

MR. WILSON: I have no further questions.

MR. KATZ: I have one further question.

### FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. KATZ:

Q Assuming the existence of a policy, under which you could, No. 1, freely visit a penal institution and cover all areas, tour all areas of the institution, talk to inmates of the institution whom you encountered, in the course of such a tour, and together with that, have free and unlimited written correspondence between yourself and the inmates, do you feel that, under those circumstances, you would be able to still do a reasonably sufficient job of covering that institution?

MR. WILSON: I object to the form of the question. My assumption may be wrong but I assume you are trying to characterize the present situation at the Bureau of Prisons policy.

MR. KATZ: That is correct.

MR. WILSON: Talking to inmates—the meaning of the term "talk to inmates", as you know, is a matter of contention. [32] What it means—I don't think Mr. Machacek would be familiar with that.

Secondly, my objection goes to the free and uninhibited correspondence. That is a mischaracterization of the nature of the correspondence.

MR. KATZ: Well, we are not in agreement on that particular question.

I would like to have the witness answer the question.

THE WITNESS: Are you saying that I would have access to all prisoners or ones that I would pick out?

BY MR. KATZ:

Q Those prisoners whom you would happen to encounter by chance, during the course of a visit to the institution.

A And not necessarily the ones who may have—

Q Not necessarily the ones that you could select, that you particularly wanted to see.

A Or ones that had corresponded with me as to particular grievances?

Q No.

A No, I don't think we could report a balanced story. First of all, you just wouldn't be seeing the prisoners who had the grievances, and you couldn't follow up on those reports, by checking them with other prisoners or going to prison [33] officials.

Q I would assume, under the policy, that you would be allowed to go to prison officials.

A But not to other prisoners?

Q Not to specified prisoners.

A What I am getting at is that by talking to one particular prisoner, which a reporter has in mind, he can take the reports or the grievances of that prisoner, and go to other people with it, within the prison, whom that prisoner might say could verify those stories.

Q But you could verify those stories by writing to other prisoners, could you not?

A But it would take longer and again, in the course of writing out questions and receiving answer back, the answers may not be sufficient, and you could not immediately clarify or elaborate.

Q Is immediately always a requirement? There are feature stories and there are breaking stories, are there not?

A Well, in covering as detailed and complicated a story as the prison, it might take one or two or three months or maybe longer, if it was done by correspondence, any maybe that same situation wouldn't exist, two or three months hence.

Q Well, if it was your purpose to write a feature [34] story on the prison, it would no doubt take you some time, researching such a story anyway, would it not?

A Well, I would think that, with a visit to the prison, it might take a matter of a few days, if not less.

Q But you would not consider the type of policy I have described to you as amounting to a news blackout, with respect to the prison concerned, would you?

MR. WILSON: Objection.

THE WITNESS: Well, maybe not a complete blackout, but certainly it has an inhibiting effect on providing a complete and comprehensive story.

MR. KATZ: That is all I have.

MR. WILSON: I have just a couple.

#### FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. WILSON:

Q Mr. Katz asked you about the development of a feature story.

A Yes.

Q Is there a different process that goes into the development of a feature story, as opposed to any news story? Are they different?

A Yes, they are different. They are different types of stories. A feature story, I would characterize as in the [35] instance of a prison, as what their educational training program was like, a general overview of what kind of classroom facilities and workshop facilities were available to the prisoners, but that is different from a hard news story which might be on prisoners' grievances.

Q Are the techniques that you would employ different, depending on whether the story was hard news versus a feature.

A Feature news is less difficult to get. There is not as much digging required, whereas if you were investigating a prisoner's grievance, it would require more skill and investigation, interviewing people; you would be probing them more than you would in writing a feature story.

Q Is there a difference in the timeliness factor in a feature versus a hard news story, a story on a prisons' educational facilities, for instance, versus grievances?

A I would think so. A feature story on a training program could probably hold for weeks or maybe a month, but if a prisoner had grievances about something that was happening to him that particular day or in the past, then that is in the nature of a hard news story, much in the same fashion as a slum landlord evicting a tenant because he had refused to pay the rent.

Q Is it your testimony that, in the development of [36] hard news, relating to prisoners' grievances, a fair and accurate story on that has a critical dependence on the opportunity to visit and obtain interviews?

A Yes.

Q Is the opportunity for face-to-face interviews unimportant in a feature story?

A No, I would say that it is equally as important, in the sense, that to do a good job, a good, accurate descriptive report, you have to see the program in operation.

#### FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. KATZ:

Q Do you feel that every alleged prisoner grievance, regardless of nature, is something that calls for immediate action on your part?

A Well, if I were a reporter, assigned to covering prisons, I would certainly check out every grievance, and I would want to do it as fast as possible.

MR. KATZ: That is all.

MR. WILSON: Will you waive signature?

THE WITNESS: Yes, I will.

(By stipulation between counsel, and in the presence of the witness, reading and signature waived.)

**[37] CERTIFICATE OF NOTARY PUBLIC**

I, Eileen King, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

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Notary Public in and for  
the District of Columbia

**My Commission Expires:**

**September 1, 1977.**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 467-72

**WASHINGTON POST CO., ET AL., PLAINTIFFS,**

-vs-

**RICHARD KLEINDIENST, ET AL., DEFENDANTS.**

The deposition of **PETER B. BENSINGER**, called by the Plaintiff for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before **TERRY KUPPERMAN**, a Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at Suite 400, 160 North LaSalle Street, Chicago, Illinois, on the 8th day of November, A.D., 1972, commencing at 4:00 o'clock p.m.

**PRESENT:**

**MESSRS. WILLIAMS, CONNOLLY & CALIFANO,**  
(1000 Hill Building, Washington, D.C. 20006), by:

**MR. RICHARD M. COOPER,**  
Appearing on behalf of the Plaintiffs;

**MR. MICHAEL A. KATZ,**  
Assistant United States Attorney,  
(United States Courthouse,  
Washington, D. C. 20001),

Appearing on behalf of the Defendants.

**I N D E X**

<b>Witness</b>	<b>Direct</b>	<b>Cross</b>	<b>Redirect</b>	<b>Recross</b>
<b>PETER B. BENSINGER</b>				
By Mr. Cooper	P.8		P.70	
By Mr. Katz		P.58		P.74
<b>Exhibits</b>				<b>Marked for Identification</b>
<b>BENSINGER DEP. EXH. NO. 1</b>				<b>P. 7</b>
<b>BENSINGER DEP. EXH. NO. 2</b>				<b>P.41</b>

[3] (The witness was duly sworn.)

MR. COOPER: Let the record show that this deposition is being taken pursuant to notice and that Assistant United States Attorney Michael Katz is here to represent the Defendants, and I am here to represent the Plaintiffs.

PETER B. BENSINGER,

called as a witness by the Plaintiffs, having first been duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. COOPER:

Q Would you state your name and address, please, for the record?

A Peter B. Bensinger, Director of Corrections for the State of Illinois. My official business headquarters is 201 State Armory, Springfield.

Q Mr. Bensinger, would you state briefly your educational background?

A My educational background consists of a college degree, Liberal Arts, from Yale University in 1958. I went to the Phillips Exeter Academy before that.

[4] Q Did your position as Director of Corrections make you the chief executive officer for the Illinois correctional system?

A Yes.

Q How long have you held that position?

A Since January 1, 1970.

Q Would you describe briefly, for the record, please, the Illinois correctional system?

A The Illinois Department of Corrections is the state agency responsible for the institutional care and after care of all offenders committed from juvenile and criminal courts of the State of Illinois. It is an agency with four adult correctional penitentiaries or institutions: A State Reformatory for Women, and a State Farm for misdemeanants. In addition to those facilities, we have approximately 30 different juvenile schools or camps or



adult work release centers or halfway houses, employing approximately 5,000 employees and dealing with approximately 15,000 offenders, either in institutions or on parole.

Q Can you give us a rough estimate of the average daily population of your adult facilities?

A Yes. The average daily population of the [5] six adult institutions at this point in time would be 6250 inmates.

Q And what is the range of offenses represented in those institutions; for what offenses are people sentenced to those institutions?

A Most of those are sentenced for burglary, robbery. But there are a number of individuals—somewhere in the neighborhood of 700—who are committed for murder, manslaughter, as another group; there are some narcotics offenders that are committed for the sale of narcotics.

There are other crimes of rape and violence.

I would think it would be a normal type of state correctional agency that receives offenders that gets something more than probation or a misdemeanor offense.

Q Now, as Director, are you in regular contact with the officials who administer these institutions?

A Yes. We do have an Assistant Director as well in charge of adult corrections, who, with me, is a state officer, who has specific statutory responsibility over adult correction. But I am in touch with the institution administrators as well.

[6] Q Do you at the present time have a position with the Association of State Correctional Administrators?

A Yes, I am President of that association.

Q Would you describe for the record what the association is and what it does?

A The Association of State Correctional Administration is an association of agency heads from each of the 50 different states in the United States who have responsibility for adult corrections. It is an association that also includes representation from the Federal Bureau of Prisons, the Canadian penitentiary system, and the three largest metropolitan area jail or correctional complexes

that operate independently from the state systems—New York, Philadelphia, and Chicago.

And the association—a relatively new association, has as its objective to further the interpretations and improvement of correctional policies and practices, and it has been meeting since mid-1960's. Lately, we have been addressing ourselves to guidelines, issues involving more national focus of legislation and attention.

Q Do you keep in touch through the ASCA and [7] in other ways with developments in penal systems elsewhere in the United States?

A Yes, we do. We have a correctional memo newsletter that is issued quarterly, and we do have meetings. In the last year, we have had three. So we do meet every so often as a body. In fact, we are meeting on November 18th.

Q And do you personally keep abreast of developments elsewhere?

A As best I can. I think this is a very fast-moving field, so there is a lot to keep track of.

MR. COOPER: Would you mark this as Bensinger Deposition Exhibit 1.

(WHEREUPON, said document was marked Bensinger Deposition Exhibit No. 1, for identification, as of 11/8/72.)

BY MR. COOPER:

Q Mr. Bensinger, I show you Deposition Exhibit 1 to this deposition and ask you if you can identify this document?

A Yes, I can. It is our Section No. 011 of Administrative Regulations for the State of Illinois, Department of Corrections, issued effective April 3, [8] 1972, with respect to news media visits and interviews.

Q And does this document reflect the current policy of the Illinois correctional systems with respect to the interviews between the members of the press and the inmates in your jurisdiction?

A Yes, it is our policy. Yes, it does.

MR. KATZ: I am sorry. Could you repeat what the date was this became effective?

THE WITNESS: April 3, 1972.

The answer to that question is yes.

BY MR. COOPER:

Q What was the policy prior to the effective date of this document?

A Well, I think the answer to that question was that we did not have a uniform policy or a stated policy on a number of areas that were of interest to correctional administrators and to our own agency, and certainly news media visits and interviews was just one of a whole scope of 160 or so different points of interest that we did want to make a clear statement of policy on. The only prior review that I could determine that Illinois embarked upon was about a decade ago, when an [9] institutional rule book was developed in the late 1950's, and published in the early 1960's.

Q What was the deliberative process or the consultative process that led to the promulgation of this policy?

A We initially identified a number of subject areas that we felt the Department should address itself to in terms of policy. We consulted with our technical advisers, the Illinois Attorney General's office, case law, our wardens and superintendents. At the same time, moving through the legislature was a proposed unified Code of corrections, which was subsequently acted upon in 1972.

Q And the "we" that you referred to, referred to who? Who are they?

A Well, it was Assistant Director Monihan (phonetic) and myself and my office represented by Mr. Charles Rowe as well as the Project Director of—this will be a long name—the Council on the Diagnosis and Evaluation of Criminal Defendants, a Mr. Robert Kent Scott, who was Project Director of the Unified Code of Corrections, which I referred to earlier.

Basically, Mr. Rowe, who works in our office, [10] a Mr. Scott who works—who is an attorney and who has been working principally on the Code, and our Technical

Advisers developed a number of draft uniform regulations which we subsequently reviewed.

Q And this particular policy reflected in Exhibit 1 was the product of consultations with the various people you mentioned, is that correct?

A Yes, it was.

Q Now, I direct your attention to Paragraph 3 of Exhibit 1, and I would like to ask you about certain passages in that paragraph.

The paragraph—correct me if I am wrong—lists a number of factors that chief administrative officers are to take into account before deciding whether to grant an interview between an inmate and a member of the press.

What is meant by—I quote—"The effects such an interview would have on the inmate and his personal mental attitude"?

A There are some instances where an inmate may have had a personal family relationship that got shattered or someone—something that he did or something that someone else did to a member of his family or an event that could have transpired [11] outside of the institution, that the discussion of which would have created emotional problems for him, possibly acting out behavior as a result of the interview. That would be my interpretation of that phrase.

It was not meant to be definitive in the sense that we would be limiting the institution warden or superintendent to any specific statements or condition of facts, but rather said to the superintendent, we believe you have some responsibilities and some considerations to take into effect before deciding to grant the interview. And amongst those considerations are effects this might have in causing acting out behavior on the part of inmates.

Q So the concern, here, are you saying, is the psychological well-being of the inmate with whom the interview was requested?

A I think that is certainly—would be considered to be included in that phrase.

Q To your knowledge, have interviews been denied on this ground under your policy?

A I don't have specific knowledge of that having taken place. But I might not always be informed, because the policy is one that is mandated [12] as discretionary with the individual superintendents.

Q What is meant by the phrase "the effects an interview would have on other inmates"? What considerations of this sort would lead to the denial of an interview under your policy?

A I would think if you had a confrontation of different groups, whether it would be opposing, let's say gang-type groups of inmates, and you interviewed one individual, and this interview was given some notoriety and the other individual's point of view was not able to be put forth, it could bring a lot of pressure on those type of inmates or that individual. You might also have to face a situation as a superintendent or warden, where you have a very tense problematical situation in the institution, the granting of an interview might be such that it would promote, if not a disturbance, additional tension that would be detrimental to the safety and security of the institution. But I would think the basic reason for the phrase would be on the former.

Q That would be a situation where there is hostility between groups of inmates?

A Yes.

[13] Q And when you say to "protect the security of the institutions," what kind of standards are you thinking of in that situation? What kind of threat must be there?

A We are in a field that is imprecise at best. What we are talking about is predictability of the attitudes in the events that might take place in a correctional institution, housing thousands of men, under the best of conditions, at normal circumstances. And what we are saying—and I think our wardens and superintendents do have this feeling—they tend to be able to feel the pulse of an institution, and when an interview with an inmate that would receive notoriety or publicity or just the granting of the interview itself cause some special attention, it could, number one, call a deadline to mind as a certain date that certain things has to be done on the

part of the staff, or make specific reference to some things that members of the inmate body or the staff may or may not have done, or it could make threats to members of outside interest groups that could be part of a problem that might result in a disturbance at the institution.

And I don't mean to give you too wide of [14] a variety of answers, but I am trying to convey to you that under some cases and under certain conditions, the granting of an interview might disrupt the safety of the institution.

Q Just one more question on that: Can you articulate a degree of danger or a level of probability that would be required for an interview to be denied under this standard?

A Let me give you an example: Say someone were in what we call administrative segregation and acting out in terms of their behavior. I think the conditions—in some cases—notoriety that that incident would give would tend to reinforce the inmates' behavior of acting out.

In other words, if there was an established grievance procedure, and the inmates did have access to courts and attorneys and access to my office through uncensored and unopened letters and still they felt additional pressures or notoriety could be gained by disrupting the institution, by throwing feces or breaking up part of the individual cell arrangements, the beds, the linen, just to call attention to their problems, it would be, I think, subverting the normal administrative procedures for [15] adjustment, and I think it would probably prolong and cause unnecessary tension. And I think many times the inmates might not be tempted to do that if they didn't feel that somebody out there would—would cause extra pressure on the institution.

So, I think sometimes instead of working positively on the inmates' behalf, it works negatively.

Q Well, there you have an existing behavioral problem, a pre-existing behavioral problem going on.

Could an interview be denied under this language if a superintendent feels he just doesn't want to take any

chances, although there has been no past record of behavior problems with a particular inmate?

A Let me see if I understand your question. You are saying, would it be likely for a superintendent or warden to deny an inmate an interview based on no past problems or behavior?

Q But simply on a vague prediction as to the future that there might be a problem somewhere in the future?

A It is possible.

Q Would that be consistent with the policy, [16] or does the policy require him to think in terms of some probabilities?

A I think the policy is meant to encourage communications between public and our correctional inmates and institutions and employees. And unless there were some problems in which the superintendent had some grounds on which he felt we shouldn't grant this interview, it would probably be granted. It is an individual case decision on the part of the superintendent.

What you said to me is—let's take a given inmate who has what you are implying, a good behavior record, would he be denied an interview, and under those conditions, I would say probably not.

Q So then you are saying that the policy requires some grounds for—or some definite reason to think that there would be a problem if the interview was granted?

A It says with respect to request for interviews that at all times the agreement of the inmate and inmates' attorney will be necessary, and then it says that the chief administrative officer, the warden, prior to deciding to grant such an interview [17] will have to take into consideration certain situations which we call to the warden's attention.

Now, if those situations are not present, then, our policy would be to say that the warden, you know, maybe he has a reason of his own, and if he feels the interest of the institution and department will be adversely affected, he can still deny it. But I would say that would be an exception.

Q And the exception would have to be supported by—he would have to give some reasons why he thinks there would be a problem?



A I would think so. He would have to say why.

Q To go on, what is meant by the phrase: "The effect an interview would have on any pending review by the Parole and Pardon Board"?

A Well, for example, where an inmate has a very high level of visibility, this is a person who has committed, let's say, a famous crime, an infamous crime, he may not want to be interviewed, because he is up for parole next year, and he doesn't want the victims or the public reminded that 20 years ago or 15 years ago this was that famous case. So I do think, we, you know—

[18] Q But does consent of the inmate and his attorney satisfy this aspect of your policy?

A Well, it doesn't because it says that the chief administrative office should consider that as well, and that would be the reason it was stated.

Q I see. And finally, what is meant by the phrase: "The interests of the institution and Department"?

A I think we talked a little bit about that in my prior reply when you inquired as to whether a person in a general population without any prior record of problems in terms of behavior would be, let's say, denied an interview. There might be someone who is directly connected with a power group either in or outside of the institution that might, through the course of an interview, stimulate action on the outside to demonstrate, or on the inside to demonstrate, and in the interests of avoiding disturbances and demonstrations or riot-producing conditions or escapes, you might find a superintendent or warden saying, "Look, we know about this man. He has a great deal of influence with this group, and we don't want to encourage this [19] type of a force."

Sometimes—and this was true in California when I talked with Ray Procunies, who is the Director out there in their system. They felt that a number of times they had a lot of demonstrations outside their institutions, and some of the provocations outside encouraged the inmates to have some problem inside, and he feels that sometimes the pressures outside sometimes are counter-productive, even though they are phrased in perhaps different terms.



If you could strike that. I don't think I explained that whole sentence properly where I said that phrased in different terms.

Q But you don't think that the dangers or the risks from outside pressure are sufficient to cut off all interviews between inmates and members of the press?

A No.

Q Are the interviews contemplated in your policy confidential interviews with individual inmates that are conducted outside the hearing of the prison staff members, is that the kind of interview you mean?

[20] A It would generally be that nature, although we didn't state in our administrative regulations that they must be confidential private interviews. In the case of some individual offenders, it may have a maximum security classification, and we may require the presence of an officer.

Q Would that be to overhear what was said or for some other purposes?

A I would say less to overhear what is said and more to prevent the passing of contraband or the movement or exchange of illegal materials or possible violence, attempts to escape or disrupt or to take a hostage, in that case.

Usually visits are supervised.

Sometimes that supervision takes the form of an officer staying outside of a private room and looking through or being inside, and it will vary by the institution and its physical limitations and services available, by the inmates, by his classification, and the availability of his staff.

Q But in general, does the correctional staff have an interest in hearing what is said between the inmates and the reporter? I mean, do you try—do you consider that a purpose that you should pursue?

[21] A Well, we have had an interview program at Pontiac called "Issues Unlimited." And the staff is present when members of the press come in and participate in interviews, and it is helpful and it is viewed in a variety of interpretations that are given.

Our "Issues Unlimited" is a radio program which is aired live, and sometimes a columnist will go in and

write about it, but those are always held in the presence of a member of staff.

Q If a reporter and an inmate jointly request that their interview be outside of the hearing of any staff member, would that be permissible under your policy?

A With the approval of the superintendent, it would certainly be allowed. It wouldn't be prohibited unless, as I indicated, there were reasons of security, classification or space. It is not always possible.

Like Joliet-Statesville, we have a lot of inmates and we have a Parole Board that meets twice a week, all week, two out of the four weeks. So there is sometimes just not enough hearing rooms available, and the space may be a limitation, too.

[22] Q But there is no affirmative policy of discouraging confidentiality, is there, in interviews between inmates and members of the press, is that right?

A We do not have a policy—we have not mandated that you cannot have an interview between an inmate and a visitor who is a member of the news media outside of the hearing of the staff member; that is not part of our policy.

Q Now, can you describe generally the types of facilities in which interviews between members of the press and inmates can take place?

A Yes. And they vary. As I indicated—again, we are talking about adult correction, and we are talking about males?

Q Yes.

A And we are talking about felons?

Q Yes.

A Okay. We have in our minimum security in Vienna—spelled Vienna—a minimum security facility, and interviews could be conducted in what we would consider to be informal lounge-type of an area with small tables and chairs and probably a member of the media and an inmate—if it was an unsuper- [23] vised visit, which it would most likely be at Vienna. You would set at a table and chair in a large room and there would probably be some other people in there in that situation. It is a very informal, unstructured interview.

At Pontiac, which is a maximum security institution, housing about 900 men, an interview most likely would be in a room that would be available off the main visiting room used by, sometimes, visiting attorneys, and for special purposes, special programs. It is a type of confidential room.

It has glass which could be seen through and it has a door and it has four walls. It is not very large.

Q In the ordinary course, nobody else would be there except the inmate and the newsman in the room?

A At Pontiac, we have had interviews with members of staff present with inmates as well as with the newsmen. It would be possible for the interview to take place without a member of staff right in the room, possibly right outside.

I would say the more likely actual practice probably would be in a more informal discussion. [24] We haven't had a lot of interviews with members of staff and inmates specifically to really discuss a particular problem or a program or a need without the involvement of staff.

They have tried to work together so that the staff has been present, but under such circumstances there probably have been interviews that have been held where inmates have talked right with a newsman right in that private room.

At Joliet there are also private visiting rooms available for the Parole Board to use. Interviews could be held in those rooms if they are available and the Parole Board is not using them. We haven't had a tremendous demand or use of the type of interview that you are suggesting, but they have been held, and I think they have been held really—under this administrative policy—without any directions from our office—you must have newsmen interviewing in this room with these people present or these people not present.

Q So your policy is quite flexible in this respect?

A It's a rather unstructured—yes. It is a flexible policy geared to meet the individual situation [25] and the individual inmate.

Q Does your policy contemplate any restrictions on the subject matter of interviews or mandate any restric-

tions? Are there certain things that can't be talked about?

A It doesn't state that, and the policy does not indicate—our administrative personnel do not indicate to inmates that you cannot talk about this before you interview. Hopefully, any issues that the inmate may bring up that the interviewee—the news media man may have some questions which he will review with the warden and the superintendent, and we ask them to.

Q But there is nothing in the policy to restrict what an inmate can bring up initially?

A No.

Q Who makes the initial decision whether to permit an interview in the ordinary course?

A The warden or superintendent.

Q And do you review those decisions regularly or ever?

A I don't review the decisions unless for some reason or other they are brought to my attention or to the Assistant Director, Monihan. We have had [26] an instance where we have not allowed interviews for specific inmates at certain points in time and by specific reporters.

Q And have they been subject to your review?

A I have been advised of them, and I have confirmed those decisions by the superintendents and the wardens.

Q What were the grounds for the denials in those cases?

A Well, in this one case, it was following an incident in which we had—this took place July 3rd, I believe, at Joliet-Statesville, where we had four or five officers injured by an inmate—two inmates with baseball bats, and hurt these officers pretty badly. It was on a Sunday morning, and there was a general confusion in the yard following this disturbance which took place about 10:30.

We were able to resolve this situation without using firearms or mace. We did have both available. But the inmates—and there were just a few of them. As I indicated, two that initially caused this, but then there was a great confusion in the yard.

The decision was made to go into a general [27] lockup in the institution and have a shakedown. The next morning a member of the press along with members of the clergy, specific people that wanted to come down, showed up without notice at 7:00 a.m. demanding to see certain inmates. And this was within less than 24 hours after this emergency, and we still hadn't completed our investigation and tensions were running very high between staff and inmates, and we did not grant an interview from the gentlemen of the press who showed up.

Q Under your policy, would the interview have been permissible sometime thereafter?

A Depending on the option of the warden and superintendent.

Q As to what his opinion on what?

A On whether in his opinion, whether that would have been detrimental to the safety and security of the institution; whether it might have jeopardized any case we had pending with the Court of Will County, in this case, for criminal charges for the individuals that were involved in the baseball incident; whether they made unnecessary allegations and brought undue pressure on inmates or staff; that while the inmates would have been locked up, it would have caused us [28] innumerable other problems.

Q How about after the institution returned to normal, apart from the criminal cases?

A We were back to the normal operation of the institution about seven days later. I believe on the 9th. And we had no specific request for an interview from this same source.

Whether we would have granted it or not, probably would have depended upon who would have been involved or whether they would have had implications arising out of that disturbance either directly with Will County prosecution or prejudicing our own internal investigation and possibly the attitudes that other inmates and staff would have had with respect to the granting of that interview, but it is a hypothetical question.

Q What information is available to your wardens in making decisions on whether to grant interviews?

A Well, each inmate has a file or a jacket that has certain basic factual information, not only relating to the individual inmate's age and health and background, vocational education, prior criminal history, psychological testing, disciplinary [29] records, any psychiatric reports, any loss or denials of parole, the scheduling for the next parole date—it is a pretty full file, and it gives the warden, I think, an opportunity to have a pretty good insight into what this man is like in the institution and what he has been like out of the institution.

Q And do you feel that on the basis of the information available to the warden, he can make decisions on requests for interviews which both implement the spirit of your policy and protect institutional interests?

A I think our policy, based on the number of facilities we have, can do that, yes.

Q And on the basis of the information available to the wardens, can they identify the potential troublemakers, the people who, if given an opportunity to have interviews, might abuse the results of it, whatever would be the effect of it?

A Yes. The only thing—possibly in the initial reception and diagnostic processes, we might not grant an interview which an inmate just received to get a chance to know more about him, and we did deny an interview at the Menard Penitentiary two weeks ago in just that kind of a situation.

[30] Q The reason there is that you didn't know enough about the man?

A Well, we had some factual information which related back to activities in the East St. Louis general area, some activities also allied with some other community action group, and it was directly involved in the type of confrontation—I think with members of the institutional staff.

I think this individual had just been received, and we really didn't have a chance to have any dialogue with him and see what his problems were and what his needs were, and to be able to judge whether there would have been any effects that Paragraph 3 of our general policy

on interviews would have brought to light before deciding to grant such an interview.

Q But you feel once you have had some experience with a man, you can identify or determine whether he would be a troublemaker or would be a worse troublemaker if he were permitted to have an interview?

Could you make that kind of determination?

A Our feeling is that the present policy is working satisfactorily, and after a period of time [31] with an inmate in the general population, the individual warden has an opportunity to make that type of decision.

Q I just want to be clear in the record, your view on whether the information resources available to a warden permit him to make a determination as to whether an inmate is the sort who would be a real troublemaker or a worse troublemaker if permitted to have an interview—that appears to be the kind of determination called for in your policy?

A Yes.

Q And do you have confidence that that determination can be made with the resources available?

A Yes. But let me hasten to add that the warden himself will not solely make that decision without getting recommendations from his chief custody officer or chief of the clinical staff, inmates' counsel—

Q Right, I understand that.

But given those various inputs that he can make this kind of decision?

A That is our feeling.

[32] Q During the period that your present policy has been in effect, have there been many requests by members of the press for interviews with inmates? Can you give us some rough idea of the quantity of the requests there have been?

A Oh, we have had a number of—I know stories and articles written about views of various inmates in various institutions and also outside on parole. I would—I would really be guessing as to the number.

It could be, since April of 1972,—we are talking about a six-month period—perhaps we have had a dozen interviews at the most. Now, we have had a lot of mem-



bers of the media to our institutions and visit institutions and talk to inmates, but it has been informal in structure, sitting down and going over on an informal-type of an interview basis.

At Pontiac, many of the inmates participated in guiding the visitors on tours.

Q I am talking about in depth discussions, really?

A I would say no greater than 10 or 12.

Q Have been granted or requested?

[33] A Have taken place.

Q Do you have some idea of the numbers that have been requested?

A No. But I could tell you the number that I am aware of that have been denied. It would probably be maybe a half a dozen at the most, maybe three or four.

Q Okay. Since the current policy has been in effect, have there been any inmates of Illinois prisons who are well-known to the press and the general public?

A Say that again?

Q Since the current policy has been in effect, during the period since April, 1972, have you had in your institutions any inmates who are well-known to the press and general public perhaps for reasons occurring prior to their imprisonment, because of their crime or for some other reason?

A Since April of '72, have specific interviews of people—

Q I am not talking about interviews.

Are there inmates who are well-known to the public?

A Oh, we have inmates very well known to the [34] public.

Q Can you give us some examples?

A Richard Speck—

Q And are there other inmates who—

A —William Heirens. In Illinois?

Q Yes. People who are well known?

A Jeff Fort.

Q Have there been any requests for press interviews with these inmates?

A We have denied requests and so has—through a



letter we received formerly, I believe, from Richard Speck not to grant interviews.

Q He requested you not to?

A We also decided that this would not be appropriate. He requested us, as well. We have a note from he and his attorney on that. He has a case pending in Peoria.

Q But in general, does your policy preclude interviews with well-known inmates if they consent and if there is no case pending?

A It is hypothetical. It might in certain cases. We had an inmate at Vandalia, Bobby Rush by name, who was the Deputy Prime Minister, Defense Minister of the Black Panther Party. He was given an [35] interview, an unsupervised interview, I believe, at Vandalia two years ago.

That resulted in an inflammatory article which I objected to, which caused considerable tension on the grounds of the institution, and considerable problems with our staff, and had a number of inaccuracies. And as a result of this, we had to transfer him and did, and he was not granted more interviews.

Q Did the transfer remove the problem or reduce it?

A Well, I think it caused—well, it didn't reduce it immediately, because in this particular case, we are talking about an inmate who was a member of the Black Panther Party, which certainly has a connotation, I think, in terms of the general public of being a relatively militant black activist group, and in the case of this individual inmate, he was on a misdemeanor from Champaign.

He comes from Cook County originally, and was in an institution which had about a 70 percent white, 30 percent black population, perhaps a little higher. Through his efforts and certainly through this article, there was an evident attempt, I think [36] on his part and possibly on others that are at the institution to try to develop a ratio, a series of issues and problems at that institution, which this news interview not only heightened, but after its publication, gave encouragement to those that were present at the institution who had ready access to the paper.

And even after Rush was transferred, there were a number of lingering tensions that took place in the institution.

Q Could he have gotten the same views across to a newsman through the mail?

A He could have written. I think the newsman might have had less of a story to tell, by number one, not having driven 150 miles. Two, having added into this story that he had a personal interview, and this was the environment, and then come back and do the story on a first-hand basis, which I think added some sensational aspects to the story that might not have been interpreted by the public in the same light as the letter.

Q Does your policy in general preclude interviews with inmates who are leaders of groupings of inmates within an institution?

[37] A Does our policy preclude an interview of a leader of a group of inmates within the institution? It depends on the situation and the individual. In this case, this was a leader.

Q But I mean a general prohibition?

A No, I wouldn't say it would be. But I wouldn't say in a certain situation a leader might not be prohibited?

Q Right, I understand.

I direct your attention to Paragraph 4 of Exhibit 1.

A Right.

Q And ask you if you can amplify why your policy provides that interviews in general should be granted?

A Because I think the public historically has had a view that prisons have been pretty far removed, and that the events that have taken place behind the prison walls have been—I don't think necessarily accurately reported or understood. And I think the public still thinks of the prison in terms of the late movies and of the big institutions with 30-foot walls. And they tend to think that the problems of prisons are just located out in those [38] rural areas where they are located, and that there is no responsibility on the part of the public and the private citizens to participate in the correction process, much less to pay for it.

**Q** And is it your experience from dealing with the public that the public is not well informed about prison conditions, the problems that face staff members and administrators and inmates?

**A** Particularly the latter. I don't think that the public is consistently informed. Although, I think the press has made a major effort to try to be more responsible to the problems of some of the administrators, particularly of late, but usually the news story follow in kind of a scale of escape or disturbance or riots, and then a parole violation and troubles, and then third, maybe programs that are—you don't read about as often.

And there are exceptions. An inmate at the Marion Penitentiary in Illinois had a good story on his getting a college degree. Well, that is the exception, although there are a lot of inmates now getting associate in arts degrees and college degrees.

**Q** Do you feel that allowing interviews between inmates and members of the press contribute [39] in some significant way to the informing of the public about the problems and the conditions of the penal institution?

**A** I think interviews with inmates and interviews with administrators can and should contribute to the better understanding of the problems and the needs of the community. In fact, we passed a law to establish visits by inmates to participate in panel shows outside of the institution, after being properly screened, to talk about the problems of crime and drug abuse.

The inmates leave the institution and can participate even in a radio show and have. So it isn't always having the interviews done in the institution. You might accomplish more by bringing a couple of inmates, which we did last month at the Rock Valley College outside of Rockford, to participate in a panel discussion.

But I think we want to encourage greater knowledge and participation in the correctional process on the part of the public, and as represented by the news media.

**Q** Let me go back a moment.

Your experience with the Bobby Rush [40] interview.

I take it it did not lead you to ban all interviews with inmates?

A No. That is correct.

Q Your feeling is that you can deal with the isolated problems individually?

A I think the warden and the superintendent in this case made a judgment. This person had come 150 miles to interview the inmate, and yet he had apparently come with somewhat of a preconceived idea as to how he would handle that, and it didn't turn out satisfactorily.

Q Right. But the result was a decision not to permit interviews with this particular inmate?

A And we had raised some questions with the person doing the interview, although subsequently some of the interviews that this individual did I think presented a more balanced perspective.

Now, on this particular case, were it I, I might not have granted that particular individual an interview with that particular inmate at Vandalia. I think we may have had enough information on his perspective to say maybe we really don't want to have an agitation on racial issues that don't need to be polarized, to take place. But it was the [41] judgment of the superintendent at that time that he thought it could be helpful without that.

You know, maybe he didn't anticipate the result of the writing.

MR. COOPER: Would you mark this as Bensinger Deposition Exhibit No. 2?

(WHEREUPON, said document was marked Bensinger Deposition Exhibit No. 2, for identification, as of 11/8/72.)

MR. COOPER: Now, I hand you a document that has been marked Bensinger Deposition Exhibit No. 2, and I ask if you can identify that document.

(WHEREUPON, the document was tendered to the witness, and after a short interruption, the following further proceedings were had, to-wit:)

**THE WITNESS:** I can identify this document. It is the statement of policy guidelines on access to the media approved by the Association of State Correctional Administrators in Pittsburgh in August of 1972.

**BY MR. COOPER:**

**Q** Now, I ask you to look at the second page [42] of that exhibit in the section headed "interviews."

**A** Yes.

**Q** Where it says "media requests for interviews should be handled on an individual basis"?

What is meant by the phrase "on an individual basis," could you elaborate on that?

**A** I think, Mr. Cooper, what is meant is basically the same issues which I addressed myself to in the course of our earlier dialogue on why and when and where interviews might not be appropriate, and specifically with our administrative regulation 011; that as the Association of State Correctional Administrators, we didn't feel you should say you automatically have to grant interviews in general. But we also said you automatically shouldn't deny interviews.

**Q** You did not say you should deny them?

**A** We said neither should you grant them nor should you necessarily deny them out of hand, but they should be handled on an individual basis.

Presumably by institution or by system. Some of the systems have more complex or different needs than just our state, which has three maximum security institutions. So I think we meant on an [43] individual basis, but that we felt this should be left really to the individual administrators, the wardens and superintendents on a case handle basis.

**Q** And did the ASCA believe that such a policy requiring an individual determination in each case was workable?

**A** Well, I was not present at the Atlanta meeting of January in 1972 when this was developed and discussed in great detail. We broke into subcommittees and had five or six people on each of the eight policy guidelines we developed.

When we passed it in August, it was not discussed in great length as to whether this anticipated kind of problem you raised. So, I could say, you know, the association thought that it would not raise problems because we—

Q Maybe I didn't make myself clear.

By promulgating this guideline, did the ASCA in effect take the view that such a guideline could be effective?

A Yes.

Q And that it would work?

A And once more that it would be a point of reference that individual states could use as [44] they move from existing policies to a more unified national posture.

Q And that such a policy requiring individual handling of requests for interviews would carry out correctional goals, is that correct?

A Yes. And carry out the goals of the association which was to further the professionalism and better understanding of some of our problems and needs.

Q Could you describe briefly the deliberative process that resulted in this particular guideline; I mean, what kinds of stages did it go through?

A Yes. Our first discussion really took place in, I believe it was August of 1971. As a matter of fact, it was a month before Attica in Florida at the annual meeting of the American Correctional Association.

A number of administrators, myself, Walter Dunbar, Bennett Cooper of Ohio—Dunbar is in New York—Ray Procunier of California, J. J. Clark of the Federal Bureau of Prisons, and two or three other administrators, and we met informally in my hotel room, and we were talking about common problems. And we said maybe we should meet as an associa- [45] tion and just address ourselves to some urgent needs that we had.

And we agreed to meet in San Francisco in October, which we did. At that meeting, we agreed to develop some policy guidelines, uniform approaches to disciplinary procedures. A lot of court suits were taking up a lot of time. Federal suits involving administrators and war-

dens fracturing inmates—from the staff—setting up sides.

We wanted to avoid that. We also didn't want to have one person in Indiana—Michigan, having a Federal Court come down with one decision and then the next state be bound necessarily by that and change their procedures.

We wanted to anticipate some of the future directions. So we arranged to have a special meeting held in Atlanta, and the Federal Government provided an LEAA Grant to fund travel and expenses for a meeting of correctional administrators. I asked the Attorneys General, the National Association of Attorneys General, to assist us. They did. They sent representatives. We also asked for participation in terms of a good dialogue with correctional administrators.

[46] The Atlanta meeting was held. Representatives from the State Legal Department, Attorneys General and the stated administrators broke into four, possibly five sub-groups that dealt with two guidelines in each sub-group, and after the guidelines were developed, they were approved at last in total in Atlanta for subsequent final disposition in August, in our August annual meeting. President —Ex-President Bill Leak presented them. I was Secretary. And we reviewed them, and each of the guidelines were approved.

Q What was the final body that approved this particular guideline?

A It was at the annual meeting of the Association of State Correctional Administrators. There was approximately 30 to 35 of us in attendance.

Q And can you say how this guideline had been received after its promulgation?

A I think it has been received favorably. We did issue a press release on it. We made it available to law schools and to interested parties throughout the country who have written for copies.

In one case I know in the State of Maine, [47] the disciplinary procedure guidelines were satisfactory to completely eliminate the need for a court hearing and a suit in a Federal Court there, because the administrator



showed this to the Federal Judge, and she said, "This looks fine," and she agreed to adopt it, and that was one, I believe it was at the disciplinary section.

So I think it has been helpful to administrators. It is also helpful in dealing with the legislature, where you may require funds, specific dollar amounts, to be able to implement all of the provisions of this in having people hold these hearings and to have the medical services available.

So I would say it has been received in a favorable vein.

Q Okay. I have just a few more questions.

In your judgment, are the security procedures that are used in the normal course of your institutions with respect to outside visitors sufficient to prevent any members of the press from introducing contraband, during their visits with inmates?

Can you use the same kind of procedures [48] that you used with other visitors as you do with the press?

A Could we use the same security procedures with the press as we do with outside visitors?

Q Yes. Is there any reason why you could not?

A None to my knowledge.

Q From your experience, have members of the press shown any greater tendency to introduce contraband into institutions than other people who visit inmates?

A I don't have any specific knowledge that that would happen by a member of the press. The member of the press definition varies widely.

Q Do you have any reason to think that there—

A Well, in California they have had some problems with both attorneys and I think members of the press bringing things in, where they have had private interview rooms and nobody has been present. And I know Mr. Procunier feels that the George Jackson killing was a direct result of contraband being introduced by an attorney who was granted private interview space.

I personally don't have any particulars of [49] that case. I do know in some states and in some situations, anywhere where special arrangements are made can present some additional security problems. In our state, they haven't been that extensive, but it could happen elsewhere.



Q But do you have any reason to believe that members of the press are more likely to pose a problem in this area than lawyers or friends or relatives?

A Contraband?

Q Contraband.

A No.

Q Do you have any reason, from your experience, to think that members of the press are more likely to participate in escape plans, to solicit offenses or make other unlawful or improper communications with inmates than lawyers, friends, relatives or other visitors to inmates?

A No.

Q Again, from your experience, are interviews between inmates and members of the press any more burdensome administratively in institutions—

A Yes.

Q —than interviews with lawyers and other [50] people?

A I would say so.

Q In what way?

A Well, you have to have consent forms, number one. And number two, in some cases, interviews with the press are not always given in advance. You have to get inmates off of the call lines. You have to really, to be responsive to our general administrative directive, give some consideration to whether the interview should be granted.

You may have a space problem. You may have a time problem, the interviewing time. I would say interviews with the press would take more time, more staff and be a greater administrative problem than almost any other type of interview.

Could we go off the record for a moment?

MR. COOPER: Sure.

(WHEREUPON, there was a short interruption, after which the following further proceedings were had, to-wit:)

BY MR. COOPER:

Q If you compare the administrative burdens that you have described resulting from requests for [51] in-

interviews and the holding of actual interviews between inmates and members of the press in the aggregate, taking the total number of requests and the total number of interviews with the members of the press held and compare it to the administrative burdens resulting from the total number of interviews between inmates and their lawyers, relatives, friends, how significant is the burden resulting from requests for press interviews and the holding of such interviews?

A It would depend, I think, on the situation in the institution. We have not had that many requests, but where we have had a problem in an emergency or disturbance and we have had a request, we may not have granted it.

Q I am talking about simply the administrative burden in normal times?

A I don't think we have had an insurmountable number of problems. We have had problems. It does require more time, but in the aggregate, to follow your line of questioning, I wouldn't think that the problems posed by interviews would be so overwhelming as to outweigh benefits of having improved communications.

[52] Q You said since the policy has been in effect there have been some, oh, 18 or so requests or something in that order?

A I couldn't even tell you. I was guessing. Of an interview nature, I said maybe a dozen or maybe a dozen and a half, and maybe we have turned down three or four, I think. And those are that I had personal knowledge of.

Now, the institutional administrator has this guideline—

Q Right.

A —and he may have granted more interviews than I am aware of.

Q Do you have some idea of how many other interviews may have occurred during the year?

A I could find out.

Q Would that be in the hundreds?

A I have no idea. We have, I would say, probably tours, visitors walking through, members of trade ad-

visory boards, people coming from the Chamber of Commerce, the Jaycees, people coming for special events.

Q I mean principally lawyers and relatives and friends who come in the ordinary course of visits?

[53] A How many visits?

Q Yes. Would there be a great many more such visits by the press?

A Oh, I would say thousands.

Q That is what I want you to compare, the burden of that kind of visit in the aggregate with the burdens of newsmen visiting in the aggregate, comparing—if you are going to consider the numbers?

A The numbers are vastly different. We are talking about one in tens of thousands of visits from non-media people—

Q That is what I am talking about.

A When you are talking about media people, it is in the dozens, if that, in the private interview sessions.

On the other hand, when that happens, it is an administrative problem and it should not be treated lightly.

MR. COOPER: No, I understand. Okay.

## CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Bensinger, for the purposes of the [54] record, could you just give us a little information respecting what other positions that you have held prior to becoming the Director of the Illinois correctional system?

A Sure. I was Chairman of the Illinois Youth Commission in 1969 until 1970. I was Chairman of the task force on the formation of the Department of Corrections in 1969, '70. And prior to that I was Administrative Assistant to the Director of Public Safety. And prior to that a member of the Governor's Transitional Task Force, which dates back now to November of '68, about four years ago.

And prior to that I was in—I worked for a large manufacturing company in private industry in marketing positions.

Q So you never have actually worked inside a prison

or a correctional institution? You didn't come up through the ranks, as it were?

A No. As a matter of fact, I have had no specific line experience as a correctional guard or captain or lieutenant or warden or assistant warden.

Q With respect to the regulation 011 which has been identified as Deposition Exhibit 1, you [55] stated that that was made effective in April of 1972.

Prior to that, you had no specific promulgated policy on the subject of press interviews, is that correct?

A Yes. That is correct.

Q Was there any unofficial policy on the subject prior to that time?

A Not to my knowledge.

Q What was the practice of the department with respect to inmate interviews prior to the time of the adoption of this policy?

A It varied. You had people in the institution who had perhaps been a warden there for eight or 10 years, and felt he knew his job and population pretty well, and he would grant an interview and might not have even called the Director of Public Safety. Probably another institutional warden may have been concerned and said, "I have got a guy from the press", and called the Director up and said, "What should I do with him?"

And maybe the Director thought about it and told him what to do. I would think that was the practice, and an unfortunate one.

[56] Q They were all handled on sort of an ad hoc basis?

A Yes.

Q Was there any particular reason that you decided to promulgate a specific policy on the subject at the particular time that you did adopt this policy?

A We felt that we needed to promulgate policies covering a wide number of areas involving discipline, involving health, involving mail, involving visitors, involving news media visits and interviews, and wanted to do it all at once, and this is certainly one of the areas which has in the past raised some question in the courts, not only in Illinois, but outside of it.

Q All right. Referring to Paragraph 3 of the policy, the person referred to there as the chief administrative officer, that is the warden or superintendent of each particular institution, is that correct?

A That is correct.

Q So to summarize your policy, the warden or superintendent of each institution is given very broad discretion on the subject of whether or not [57] to permit an interview?

A Yes.

Q Is there any requirement that when a warden declines to grant a request for an interview that he make a written record of his action?

A There is no stated policy that he must do this. On the other hand, I would believe the practice would be to make notations and certainly to advise his superiors.

Q Has there ever come a time when any decision of a warden or superintendent to deny an interview has been appealed to your office?

A Members of the press have—I believe made known to my office that an interview was not granted, and I affirmed the institution warden's and superintendent's decision.

Q In each case?

A Yes.

Q I think you mentioned two specific instances in which to your knowledge interviews were turned down. One, involving the Joliet incident and one involving this gentleman who was from the Black Panthers.

Could you tell us about any of the others?

[58] A There was one other recently that I mentioned which took place at Menard Penitentiary, and this was a—I think the inmate's name is Kelly Paton. He was recently—I think he had been to Menard previously. He had a history of a very high level of visibility in the St. Louis area, and just came into our reception center there, and an interview request was made by a local newspaper in the East St. Louis area. The warden and superintendent felt it would be a mistake to grant an interview with-

out having further knowledge of him in the reception process, and also taking into consideration some ongoing dialogue taking place at the institution. So that interview was denied by the institution's superintendent.

Q This is pursuant to what seems to be the general practice of not permitting an interview with a prisoner who has newly come into an institution because of the fact that the warden does not have enough information about his proclivities and so forth?

A Partially. And I think also in the light of his somewhat higher level of visibility in terms of education outside of the institution at the same [59] time.

Q Could you amplify a little bit on that?

A Well, I really would need to have further particulars on that, but I was satisfied when I was called and discussed it briefly with Warden Brantley; that he had a dual basis of denial of the interview and was concerned with the effects such as an interview would have on his own institution.

Q I was wondering if you could explain this term, "Level of visibility outside of the institution"?

A This is an individual that participated, I think, in East St. Louis, Illinois, and had gotten a name for himself, developed a name for himself as a leader of certain militant forces and factions, and when received at Menard, might have continued to communicate with the general public in the same militant fashion as a result of—and through the course of an interview.

Q In other words, he was identified as being a potential troublemaker?

A Yes.

Q And it would be your view that it would be desirable in all instances to preclude interviews with [60] persons that would be considered to be potential troublemakers?

A I would say that it would be the responsibility of the institutional warden and superintendent to preclude interviews with individuals who would raise or endanger—let's use the word "endanger" the security, the normal operations of the prison. And if you use "troublemaker," yes. That phrase the public knows.

What we mean is somebody that might, inside, make a disruption of the normal operations of the institution or jeopardize the safety and security of the staff.

Q Is this in the judgment of the warden or superintendent?

A Right.

Q Have you had many disturbances in your prison system over the last year or so?

A Probably less than most major states. We have had our share. Let's say less.

Q And in general, you feel that under your policy, it would be desirable to preclude individual interviews immediately following a disturbance?

A Yes. That has been our practice, too.

[61] Q Have you had any strikes—

A Inmate strikes?

Q Inmate strikes.

A No.

Q Would you permit interviews with inmates who had been involved in an inmate strike?

A During one?

Q During one.

A No.

Q Or immediately or shortly following one?

A I am not sure that I would grant it. It would have to depend on the situation. Immediately following a strike?

I would want to have a case handle situation and weight that carefully.

MR. COOPER: Would you clarify, for the record, whether you mean a peaceful strike or a strike for violence? What kind of strike?

THE WITNESS: I interpret it as a sit-down strike, but you could certainly amplify it and perhaps I would have a better understanding.

BY MR. KATZ:

Q Well, let's say a peaceful strike. In other words, not one accompanied by violence and [62] disruption.

What you might term as a sit-down strike, I assume you would consider a peaceful strike?



A We did have one instance—pardon me. I'm going to go back—in Menard in 1971, where inmates did sit down in the yard. They did not return from the yard. And that was the only kind of work stoppage. It was a brief one for about three hours. But we didn't have a request for an interview, nor did we grant one shortly thereafter.

It was resolved without a major confrontation, although the warden certainly did threaten to use some force.

Q At what point following the termination of a strike or some other violent event or otherwise would you draw the line at prohibiting interviews at one point and permitting them at another?

A Where the institutional warden or superintendent felt that the granting of that interview would not mitigate for resumption of the strike, cause undue pressures on the negotiating ability of the superintendent or warden, or reduce the institutional staff's ability to deal with their situation or bring unnecessary tensions and pressures on [63] the institution, and that would depend really on the judgment of the warden or superintendent. It might be a matter of weeks.

Q Does the Illinois Department of Corrections have a policy respecting correspondence between prisoners and the news media or representatives and the news media?

A Yes.

Q What is that policy?

A It has a policy in terms of correspondence that would indicate that a member of the news media would apply or be applied for to be added to the visiting list just as everybody else—on the mailing list. Scratch that. It was mailing list, not visiting list.

In other words, if a person wanted to add a news reporter, a member of the media, to be written to, they would request his name be put on a list, and that inmate then would have the—that name considered along with the other names that would be added to his correspondence list.

Q It would be considered by whom?

A The warden or superintendent.



Q The warden or superintendent has the discretion to deny it? [64]

A Yes, he has.

Q In the event that the warden were to grant the correspondence privilege with a member of the news media, would that correspondence be censored?

A No.

Q Would incoming correspondence be read?

A It would be opened and inspected.

Q It would not be read?

A It would not be read.

Q Now, just referring to Paragraph 4 of your regulations stating that interviews in general should be granted in the interest of the public so as to provide better insight into the prison situation and so forth, which you amplified earlier.

Do you feel that it is—at least from the standpoint of a prison administrator such as yourself—that the same purpose could be served under a no-private-interview policy through the use of other substitutes for it, such as visits by the news media to the prisons without interviews and free correspondence between inmates and the news media? Do you feel that would serve the same goal?

A I think those are compatible goals. I am [65] not sure the impact is the same on the reporter or on those that are reading the story, as a reporter being able to say, "I personally interviewed a person at this location."

I think it depends really on what you are trying to get across. I wouldn't say it is a substitute completely for a personal interview.

Q But do you feel—and again I say from your viewpoint as a prison administrator rather than from the viewpoint of a newspaper reporter, necessarily—do you feel that such a substitute policy could be served substantially to reach this goal?

A I think it would serve to reach the goal, yes. And I think it would make a substantial contribution in doing it.

**Q** Mr. Bensinger, are you generally familiar with the Federal Bureau of Prisons and the system of institutions under its jurisdiction?

**A** Yes.

**Q** And you are aware that there are some 30-odd institutions that are under this jurisdiction of the Bureau?

**A** Thirty-two, I believe, at last count, but I am sure there are over 30.

[66] **Q** Do you have any opinion respecting whether or not the policy which you follow of vesting broad discretion in the wardens could necessarily be successful with a system like that in the Bureau of Prisons?

**A** I think it would be less successfully implemented. I think in the Federal Bureau of Prisons, where you have 32 different institutions, you would have some problems. You have got inmates that are going to be assigned from one institution to another, who might have a practice at one location and not the same practice in another, and you have got distances in the Federal Bureau of Prisons that we don't have, of 3,000 miles rather than a couple of hundred miles.

You have some ranges of security that we don't have. So I think, yes, I think a fair answer to that question would be that there would be greater complications in implementing our policies as we have identified in the deposition earlier.

**Q** So it may well be that uniformity is a more important consideration in the system rather than under your jurisdiction?

**A** I would say where you have a greater number [67] of institutions, the need for uniformity would be increased.

**Q** I think you mentioned Mr. Speck as being one of the inmates under your jurisdiction of national interest?

**A** Yes.

**Q** Is there anyone else besides Mr. Speck who is a national figure?

**A** Yes.

**Q** Who would that be?

A Well, I mentioned the name, Jeff Fort. He is the leader of what we in Chicago call the Black P Stone Nation, which is probably one of the largest street gangs in the country. We have a number of people on the death row-condemned unit section that have been committed for various serious crimes.

We have a William Heirens, who incidentally has received a college degree and has been incarcerated for some 25 years. And I could give you names of people that I think may make some national impact, but they would probably be better known locally in Illinois.

Q I think you stated earlier that it was the [68] decision, entirely apart from Mr. Speck's desires in the matter, not to permit interviews of Mr. Speck, is that right?

A Correct. In fact, we have not permitted any interviews with people on death row.

Q Could you tell me why?

A Two reasons: One, all of our cases in Illinois are up for resentencing as a result of trials pending, first in the U. S. Supreme Court decision and then following that, they are being remanded for subsequent sentencing.

Secondly, the policy that existed with respect to interviews in death row was in our opinion satisfactory to the inmates who are in an institution, and we have never granted—have not granted prior to my time and during it—a change in this policy of having—of men brought out for special interviews in special interview rooms from this one section.

So it is a question of litigation. It is pending on the Court's deposition. It is a question also of a continuation of a past policy that seemed to be working.

Q With respect to what has been marked as [69] Deposition Exhibit 2, the Association of State Correctional Administrators, I just wanted to clear up one matter.

Under the heading, "specific situations," you stated—the policy states: "Media requests for interviews should be handled on an individual basis."

Now, was it your testimony that this is a matter—the entire realm of media interviews is something which

should be determined on a state by state basis, would you say that?

A I think that my testimony would have implied that it could have been on a state by state or an institution by institution basis. I think the primary thrust of it would be on an institutional warden basis, but I don't think it would be outside the realm of possibility that a system might—no. Let me rephrase this.

As the Association of State Correctional Administrators, I believe this really refers to a state system, granting interviews on an individual basis for their state institutions. That is my interpretation. I think my testimony did include reference to a system and a state or an individual [70] institution and a state system.

So I am glad you asked that question.

Q Do you know how many states have adopted this particular policy?

A Well, I don't know how many have implemented it in practice. We, as a state association, adopted the policy, but we could determine how many in fact have got this policy next weekend and let you know.

MR. KATZ: I believe that is all I have.

MR. COOPER: I just want to clarify a few points.

## REDIRECT EXAMINATION

BY MR. COOPER:

Q Mr. Bensinger, when you were talking about the applicability of your policy to the Federal Bureau of Prisons in their institutions, you mentioned matters such as the distances of institutions from urban areas and whatnot. And you said that might cause problems.

Did you mean by that that it would cause security problems within an institution or that there wouldn't be as many interviews and that the [71] policy would not be as effective in generating interviews because of the matters you described, the transfers of inmates from one place to another maybe without the press knowing or the distances from institutions from urban areas?

What types of problems do you foresee?

A Well, I think when you have 30 to 32 different institutions, you have inmates that are certainly given every access to the courts and are familiar with what is the procedures at one institution, and they move from Terre Haute to Leavenworth or to Atlanta, you automatically, where you change the ground rules in one institution, create tensions among the inmates. If they don't have the same rights and the same procedures in the next institution, it is something that is a complaint, it is an irritant to the inmate, it becomes an issue with the administration. It is just an administrative problem that you can get rustled around with if you have a lot of different locations, and we really have only three major institutions and have tried to, you know, adopt this policy that we have, which on an individual basis we have seen evidence of it enforced and some [72] interviews denied, but they have been somewhat limited. We don't have that many inmates, 6,000 compared to 20,000, or that many institutions, and I am sure that as one inmate goes from one institution, say in one state, to another institution in another, and he doesn't have the same interview policies in effect, it may be used as a complaint or grievance against the institution improperly or properly, but it is an additional item that could be an irritant.

Q Are you satisfied that your own policy as it is operated and even given that maybe some mistakes have been made in implementing it, that it is a satisfactory policy?

A Yes.

Q Are you satisfied with it?

A Yes.

Q I just want to go back once more and try to clear up one of the points about the ASCA policy.

When it refers to an individual basis, I understood—and correct me if I am wrong—I understood your testimony to be that it means that on a statewide basis or institution by insti- [73] tuition basis, decisions would be made request by request?

A That is correct. That was the source of my testimony, but I think the point was raised—and I am

trying to recall my phraseology—that I might have mentioned the word “system.” But my interpretation of this, since it is basically a guideline for state administrators, is that that would refer to an individual institution interview policy for an interview for an inmate in that facility, within that state system.

Q Just one other point.

Your policy is indeed a policy? It does direct the administrators to consider certain matters and provides them some guidance on how to implement it?

A That is correct.

Q It is just not absolutely discretionary by whim or caprice from one institution to another? There is some policy, some guidance there, is that correct?

A We have provided, I think, some guidance to the individual administrators in the areas that they should take into consideration, on which possibly [74] an interview might not be granted. But that decision is discretionary with the wardens and superintendents, and I would not say that the guidelines are narrow by any means.

Q But given human differences, there is one policy that applies to your institutions?

A Yes, that is correct.

MR. COOPER: That is all I have.

MR. KATZ: May I just ask a couple of more questions?

## RECROSS EXAMINATION

BY MR. KATZ:

Q What is the average range of experience of your wardens and superintendents?

A How do you mean, range of—

Q How long they have been in the system and so forth? Are they experienced men?

A Very experienced men. I would say they have been in adult corrections between 10 and 20 years, and in various levels of responsibility.

MR. KATZ: That is all I have.

MR. COOPER: Thank you.

You can have an opportunity to read this [75] before it goes in and sign it, or you can just waive it on the assumption that he is taking it down correctly.

THE WITNESS: He has taken it down correctly, but I would probably want to change my grammar. But you go ahead and do what you want.

MR. COOPER: Well, that you can't do.

THE WITNESS: What?

MR. COOPER: You can't change your grammar. The question is whether he took down what you said accurately. If you want to say that he did not, then—

THE WITNESS: What are you asking?

MR. COOPER: There is a procedure by which you can have an opportunity to sign this, by which you say that he took down what you said accurately, to—in most cases the people waive that and just assume that the reporter took it down correctly.

In other words, if you want to go over and read it before you sign it, you have that right, or you can simply waive it, but it is not like the Congressional Record or a Congressional [76] hearing where you can improve on your grammar. If you want to say that he did take something down incorrectly—than what happens?

THE REPORTER: Then you would make your corrections and initial each correction.

THE WITNESS: What would be the preference of you two gentlemen?

MR. COOPER: We will waive signature.

MR. KATZ: We will waive signature.

MR. COOPER: If you are prepared to read it to make sure that it is correct—

THE WITNESS: I have confidence in the court reporter's ability to take down what I said accurately, and I will waive that requirement.

(AND FURTHER DEPONENT SAITH NOT.)



[77] )  
STATE OF ILLINOIS )  
COUNTY OF COOK ) ss.

I, TERRY KUPPERMAN, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify that heretofore, to-wit, on the 8th day of November, A.D., 1972, personally appeared before me at Suite 400, 160 North LaSalle Street, Chicago, Illinois, PETER B. BENSINGER, a witness in a certain cause now pending and undetermined in the United States District Court for the District of Columbia, wherein WASHINGTON POST CO., et al., are Plaintiffs and RICHARD KLEINDIENST, et al., are Defendants.

I further certify that the said PETER B. BENSINGER was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by said witness was reported stenographically by me in the presence of the said witness, and afterwards reduced to typewriting, and the foregoing is a true and correct transcript of the testimony so given by said witness as aforesaid.

I further certify that there were present at the taking of this deposition MR. RICHARD M. COOPER on [78] behalf of the Plaintiff, and MR. MICHAEL A. KATZ on behalf of the Defendants.

I further certify that the signature of the witness to the foregoing deposition was waived by agreement of counsel for the respective parties.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this 17th day of November, A.D., 1972.

/s/ Terry Kupperman  
Notary Public, Cook County,  
Illinois.

My commission expires 7-29-73.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

WASHINGTON POST CO., ET AL., PLAINTIFFS

v.

RICHARD KLEINDIENST, ET AL., DEFENDANTS

STIPULATION

Plaintiffs and defendants, by their undersigned counsel, hereby stipulate that the following corrections be made in the transcript of the deposition of Peter B. Ben-singer:

p. 8, line 22	for "They" read "The"
p. 11, line 14	for "out of acting" read "acting out"
p. 14, line 12	for "come" read "some"
p. 19, line 3	for "Pecunic (phonetic)" read "Procurier"
p. 26, line 8	for "denies" read "denials"
p. 28, line 12	for "basieging" read "prejudicing"
p. 29, line 20	for "purposes" read "processes"
p. 29, line 21	for "which" read "with"
p. 31, line 20	for "inmates, his counsel" read "inmates' counsel"
p. 38, line 22	for "associated arts" read "associate in arts"
p. 40, line 20	delete first "with"
p. 42, line 9	for "further" read "earlier"
p. 46, line 6	for "least" read "last"
p. 47, lines 1, 2	for "was satisfactorily" read "were satisfactory"
p. 48, line 16 ff.	The passage beginning with the word "well" and ending at page 49, line 5 with the word "elsewhere" was uttered by the deponent and not by the questioner. Accordingly, the symbol "A." should be inserted before the word "well" on page 48 line 16, and that word should appear as "well".

p. 55, line 4

for "subject to" read "on the  
subject of"

p. 56, line 6

for "times" read "time"

p. 57, line 15

delete second "and"

p. 62, line 20

for "mitigate" read "militate"

An additional copy of this Stipulation is attached for  
insertion after the cover page of the deposition.

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**RICHARD M. COOPER**  
Attorney for Plaintiffs

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**MICHAEL A. KATZ**  
Assistant United States Attorney  
Attorney for Defendants

November 29, 1972

**ADMINISTRATIVE REGULATIONS****STATE OF ILLINOIS  
DEPARTMENT OF CORRECTIONS  
ADULT DIVISION****[EMBLEM]****SECTION NUMBER  
011****SUBJECT:****News Media Visits and Interviews**

1. It is the policy of the Department of Corrections to encourage visits by the general public, college students, and the news media to correctional institutions.
2. If pictures are to be taken, arrangements for same should be made with the Chief Administrative Officer prior to the visit. At no time can pictures be taken of inmates' faces without advance clearance from the Chief Administrative Officer and without the approval of the person to be photographed. The inmate must sign the Inmate Consent Form, a copy of which is attached, before such pictures may be taken.
3. With respect to requests for personal interviews with inmates, at all times the agreement of the inmate and the inmate's attorney of record will be necessary. The Chief Administrative Officer, prior to deciding to grant such an interview, will have to take into consideration the effects such an interview would have on the inmate and his personal mental attitude, the effects it would have on other inmates, the effect of such an interview with respect to any pending review by the Parole and Pardon Board, and the interest of the institution and Department.
4. Interviews in general should be granted in the interest of the public so as to obtain a better insight into the needs and problems of men in trouble and so as to provide an insight into how the community can be helpful.

**INMATE CONSENT**

The undersigned does hereby consent to be photographed,  
and/or interviewed by \_\_\_\_\_

**FOR THE EXCLUSIVE PURPOSE OF** \_\_\_\_\_

Said photographs may include filming of any kind, and  
said interview may include a recording thereof. The un-  
dersigned consents and authorizes that any such photo-  
graphs or interview material may be utilized by \_\_\_\_\_

for the aforementioned purpose.

Furthermore, the undersigned does hereby release and  
does save harmless the Department of Corrections, its  
agents and servants, from any and all claims for damage  
for libel, slander, invasion of the right of privacy, or any  
other claim based on the use of said material.

The above consent is given by me freely and voluntarily  
without any promises, threats, or duress.

Dated \_\_\_\_\_ Signed: \_\_\_\_\_

Witnessed by: \_\_\_\_\_ Address: \_\_\_\_\_

Address: \_\_\_\_\_

## **ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS**

### **POLICY GUIDELINES: ACCESS TO MEDIA**

The American public is vitally concerned with crime and is growing increasingly interested in corrections. Virtually all information reaching the public will be via the media of radio, television, newspapers, magazines, movies and books. Good relationships with the media are an important part of any modern correctional system both for the benefit of the public and the correctional system. It must always be remembered that correctional systems operate for the benefit of the public. Responsible reporting informs the public of the manner in which the correctional systems are operating. The media should, therefore, have access to correctional operations, except where such access would interfere with the orderly administration of the institution.

#### **GENERAL PRINCIPLES:**

There is no substitute for personal contact with the people who present the news to the public. Correctional officials should take the initiative in making and keeping acquaintance with representatives of the media. They should try to be as accessible as possible at all times to the media. When correctional officials demonstrate dignity, honesty, and dedication to their profession, they will almost invariably have good relationships with the media. Any appearance of lack of honesty may result in an overreaction by representatives of the media and may lead to the development of a bias against correctional officials.

Representatives of the media should be permitted access to institutions to the maximum extent compatible with their orderly administration.

Correctional officials should not be reluctant to state their views. Silence may be taken as meaning the lack of a

reason or a justification for an action which to correctional officials was clearly necessary.

Suppression of news and events of public interest is likely to result in a strong negative public reaction. It is preferable to alert the media immediately about news of importance, rather than have it reach them later through other sources. In an emergency, it is preferable to inform the media of the existence of the problems and to demonstrate a willingness to keep them informed.

Officials should regularly and conscientiously supply the media with news of general interest to lay the foundation for good relations.

#### **GENERAL RULES:**

Inmates should be allowed to send correspondence to and receive correspondence from media representatives with no greater limitation or restriction imposed by the institution than upon any other general correspondence sent out and received by the inmate. Restrictions may be imposed when correspondence endangers the security of the institution or impedes the orderly operation of the institution.

Inmates should be permitted to submit manuscripts to publishers or serve as book reviewers for newspapers or other publications.

Requests by media representatives for filmed interviews with inmates may be approved, if the filming of the interview will not interfere with the orderly operation and security of the institution. Written inmate consent should be required.

When an inmate is permitted outside an institution for rehabilitative programs or other public service, he may appear on radio or television. Written consent from the inmate may be required.

#### **INSTITUTIONS:**

Media representatives should be admitted to correctional institutions during administrative business hours. They

should be encouraged to contact the institution prior to arrival in order to make the necessary arrangements. By prior arrangement, access may be permitted during other than administrative business hours.

Limitations upon the number of media representatives to be admitted at any one time may be imposed by the institutional head. During institutional disturbances admission may be prohibited.

Members of the media may be escorted while in the institution.

## **SPECIFIC SITUATIONS**

### **INTERVIEWS:**

Media requests for interviews should be handled on an individual basis.

When the inmate in an interview is identifiable, his written consent should be required.

Access to any inmate may be restricted at any time that interviews interfere with the orderly administration of the institution.

### **PHOTOGRAPHS:**

Inmates may be photographed by media representatives in groups or as individuals. When an inmate in a picture is identifiable, his written consent should be required.

### **RECORDS:**

Matters of public record should be made available for examination upon request. Copies should be provided at the expense of the requester, if institutional facilities permit. Confidential materials, such as inmate medical, psychiatric, law enforcement reports, or confidential court records should not be disclosed.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No. 467-72**

**WASHINGTON POST CO., ET AL., PLAINTIFFS**

**v.**

**RICHARD KLEINDIENST, ET AL., DEFENDANTS**

The deposition of HANS MATTICK, called by the Plaintiffs for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before TERRY KUPPERMAN, a Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at the University of Illinois, Circle Campus, College of Liberal Arts & Sciences, Center for Research and Criminal Justice, Room 4060, 618 South Morgan Street, Chicago, Illinois, on the 9th day of November, A.D., 1972, commencing at 2:30 o'clock p.m.

**PRESENT:**

**MESSRS. WILLIAMS, CONNOLLY & CALIFANO,**  
(1000 Hill Building, Washington, D.C.), by:

**MR. RICHARD M. COOPER,**  
appearing on behalf of Plaintiffs;

**MR. MICHAEL A KATZ,**  
Assistant United States Attorney,  
(United States Courthouse, Washington, D.C.),  
appearing on behalf of Defendants.



[2]

## INDEX

Witness

Direct Cross Redirect Recross

HANS W. MATTICK

By Mr. Cooper  
By Mr. Katz

P.3

P.47

P.63

Exhibits

Marked for  
Identification

MATTICK DEP. EXH. NO. 1

P.30

[3] (The witness was duly sworn.)

MR. COOPER: Let the record show that this deposition is being taken pursuant to notice; that Assistant United States Attorney, Michael Katz, is here to represent the Defendants, and that I am here to represent the Plaintiffs,

HANS W. MATTICK,

called as a witness by the Plaintiffs, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOPER:

Q Professor Mattick, will you state your full name and address for the record, please?

A My name is Hans W. Mattick, M-a-t-t-i-c-k. Home address or—

Q Home address.

A 5619 South Dorchester Avenue, Chicago, Illinois, 60637.

Q Would you describe your educational background?

A Well, I have a Master's degree in Sociology from the University of Chicago.

Q What is your present employment?

[4] A I am a Professor of Criminal Justice and the Director of the Center for Research in Criminal Justice at the University of Illinois at Chicago Circle Campus.

Q Would you describe your prior experience with penal or correctional institutions?

A Well, I think I should begin around 1950.

In 1950, I became a research sociologist for the Illinois Parole Board in order to do a followup study on men who had been paroled to the Army during World War II, and what that experience meant both for the future of the military and the future of corrections in this country.

Then, in 1952, I went to work as a sociologist actuary for the Illinois Parole Board, stationed at Statesville

Penitentiary, Joliet, Illinois, where I interviewed all men who came up for parole in order to advise the Parole Board in its deliberations and where I conducted a series of studies on inmate populations and parole prediction studies.

In early 1955, I moved to the Cook County Jail in Chicago and became the Assistant Warden there, and continued in that position until December of 1958.

The next thing that is related to the field [5] of criminal justice is I was employed as a research associate for the Institute for Social Research of the University of Michigan in order to become the Director of a large scale gang delinquency project in the City of Chicago, which was called the Chicago Youth Development Project. This was street work with juvenile gangs in the city, and it was the largest juvenile delinquency prevention project that was financed that had ever been put on by the City of Chicago. That lasted until towards the end of 1966.

At that time, I—

MR. KATZ: Excuse me. When did that start?

THE WITNESS: It started in 1960, in July. I then became the Co-Director of the Center for Studies in Criminal Justice at the University of Chicago Law School, which was essentially a research center in the whole field of criminal justice, but with considerable concentration in the field of corrections, and that continued until September of 1972.

I have been in my current position as the Professor of Criminal Justice and Director of the Center for Research in Criminal Justice since September 1, 1972.

[6] BY MR. COOPER:

Q Would you describe the institution where you worked at Joliet?

A Statesville Penitentiary is the largest maximum security prison in the State of Illinois. It had a unique architectural design, having circular cellhouses, and it was considered the maximum security prison, which received those kinds of prisoners that could not be well-managed in the other four or five felony prisons in the

State of Illinois. At the time that I was at that institution, it had a population of about 3,000.

Q Were these felons?

A Male adult felons.

Q And did your activities and functions there bring you into close contact with the inmates during the time you worked there?

A Yes. It was my function, as I said, to interview every man who was coming up for parole, and to write a advisory report for the Parole Board and to apply a statistical prediction instrument which stated in quantified form the degree of risk that he presented on parole. And in order to write those reports from the best informational base, I went around [7] to the cellhouses, to the shops, to the recreational areas, inquiring into all of the relations of the inmates who were on the current parole docket so that I would have a fact basis before I had the inmate's testimony in the interview situation.

Q So that in the course of your work, you became fairly familiar with what went on in the inmate population and the dynamics of the population in the institution, is that correct?

A Insofar as a non-prisoner could become familiar with those things, yes.

Q And would you describe the Cook County Jail, please, during the period when you were there?

A The Cook County Jail was a maximum security facility that functioned as both a detention institution and a place where sentenced misdemeanants served out, would serve out sentences which were for the most part one year or less.

However, it was built for the detention function, so it was built as a maximum security institution. It had a cell capacity of 1302, and during the time I was there, the population varied from 1600 to 2250.

It had the entire range of offenses that it [8] is capable for man, woman or juvenile to commit and be charged. We had in that institution males and females, adults and juveniles down to the age of 14, city, county, state and Federal prisoners, and persons who were charged

from committing a public nuisance to capital cases to waiting for execution.

It was an institution that turned over about 23,000 inmates per year, and in terms of numbers at that time, it was the tenth largest penal institution in the United States.

Q What type of sentenced offenders did you have in that institution?

A The sentenced offenders for the most part were sentenced misdemeanants; that is lesser offenders whose sentences were one year or less, except for a group which might number 100 to 150, which had been brought back from the penitentiaries because they were back on some post-conviction hearing or would be in transfer status, and except for the eight to 15 persons who we always had there who were waiting execution, because Cook County was distinguished as being the only other city besides Washington, D. C. that maintained its own chair. And so we had these capital cases, some of them for periods of up to [9] 10 to 12 years waiting execution.

So that was the nature of the sentenced population.

Q What were your functions and responsibility as Assistant Warden there?

A I ran the jail. I mean, they were as broad and as detailed as were required to run an institution which in the nature of the case, given its degree of overcrowdedness, given the mixture of functions and populations that it sought to serve, and given the political conditions and context in which it had in its life, and being staffed, for the most part, by patronage employees, it could not be managed well. You simply stayed on top of the situation all of the time.

I think during the first 17 months that I was in that jail, I took not a single day off, not one, not a Christmas, not a birthday, and I averaged something like 110 hours a week. That was all three shifts. And that was because it took a maximum effort to keep the situation under control during the course of a major reform effort that was going forward at that time.

Q Did you have occasion during your period [10] at the Cook County Jail to spend much time in the cell

blocks and other areas which were used directly by the inmates?

A I spent most of my time in the cell blocks with the prisoners.

Q So that you obtained comprehensive and detailed knowledge of what occurred in the prisons and inmate life generally?

A Insofar as a non-prisoner can understand those things, I think I had as good appreciation as anyone might have been able to have.

Q What were your areas of academic specialization, research and publication?

A Well, I had training as a sociologist with a minor in psychology, and towards the end of my academic career, I concentrated in the field of criminology. And most of the writing and research that I have done since leaving the university has been in a relatively broad area of criminal justice but with a major concentration in corrections.

I have written more about corrections than any other single subject, anything from describing the problems of the Cook County Jail, writing a plan for the Unified Department of Corrections for Chicago [11] and Cook County, writing on the unintended side effects of imprisonment, on prisoners, evaluating the parole experience of persons during World War II as opposed to former prisoners who went into the Army.

In the Army, I administered prisoner-of-war camps for both Russian prisoners and German prisoners, and I wrote on that subject. I made a comparison between those kinds of prisoners and how they responded to their situations.

I did the first comprehensive survey of the jails in the State of Illinois in 1967, and told people more than they ever wanted to know about that subject.

And even then, there was a great deal that is simply unknown. And so I have written a great deal about the subject, and I have a publication list.

I have written three or four books and some 60 articles have been published.

Q In this particular field?

A Well, I would say of them, probably 25 or 30 are in this field. But I think the other fields I have written in are on juvenile delinquency gangs, drugs, sex offenders, popular topics.

Q Now, Professor Mattick, I'm going to ask [12] you a series of questions concerning inmate leadership patterns and social structures and then violence and disturbances in the prisons, and I would like you to answer the questions to the best of your ability on the basis of your experience in correctional institutions and your research.

Now, in your view, what role do prison administrators have in creating and maintaining leaders within a penal institution?

A Well, I think that they have a major and active role, because the number of prisoners in a prison always outnumber the staff, and therefore, the prisoners play a significant role in the day-to-day activities and the house-keeping and maintenance tasks, and to some degree the administration of most prisons, and in that respect the administration which has the ultimate control position tends to select on a variety of bases inmates to perform these functions. It bestows upon them a differential status. It gives them varying degrees of freedom and mobility or access to information, and those are the well springs of leadership combined with whatever native talents prisoners have for the leadership structure in the prisons.

[13] Q What are the particular talents or factors that would lead inmates to look upon particular persons among them as leaders?

A Well, it would depend in part on the native talents of the person, whether he was reasonably articulate, whether he has reasonable social skills. But that wouldn't be sufficient.

He would also have to have some significant position in the prison, whether that would be the clerk of a cellhouse or whether that would be the assistant to a shop foreman or whether he would be a person who was a porter or a runner, which looks like a low status position to outsiders, but which position has great me-



bility and therefore you can become a message sender and a message carrier, or persons who work in areas that give them access to goods in what is essentially a scarcity economy.

So people who work in the kitchens or bakery or where other scarce supplies are and therefore can distribute them illegitimately or serve other purposes of that kind, they tend to have leadership.

Q Does the fact that an inmate is well known outside of prison tend to make him a leader within a [14] prison among the inmates within the prison?

A It depends a great deal on the circumstances; that is, for instance, notoriety by itself can't bestow leadership.

For instance, Sirhan Sirhan, for example, or Richard Speck are simply notorious and that doesn't bestow leadership qualities on them. Or someone like Al Capone, for example, may have had great status outside of the prison, but when he was in prison, he became the object of revenge and attacks by persons who wanted to settle old scores, because it was felt that he couldn't implement enough power to retaliate in turn.

On the other hand, there were persons, confidence men or spectacular burglars or armed robbers with big scores or something of that kind, where their reputation precedes them and follows them into prison, and that then is combined, and also with certain talents and social skill and articulateness, and if it also looks as though they have a future in the free community, either in the illegitimate world or the legitimate world, that can play a part in the phenomenon that we call leadership.

Q What are the typical patterns of relation- [15] ships between prison administrators on the one hand and the inmate leaders on the other? How do they interact?

A It depends on the degree of sophistication of the two parties concerned; that is, an administration that is well informed and well deployed can interact with any inmate body in any way practically that it chooses, but a prison administration that is relatively isolated from its inmate body and has only the most formal kinds of relationship with them, is very likely to be manipulated



by the inmate leadership or by individual inmates who fix upon the character of the prison administration for their own advantage.

So the prison administrators and the inmates interact actively in a whole variety of things. It is simply almost a total community behind walls except that it is age graded and unisexual for the most part, but every service, every function that a community would have on the outside is also on the inside, and that requires a considerable amount of interaction, and just as in the community, there is certain leadership both among the inmates and among the staff that is formal and conferred explicitly, and there is some [16] informal leadership which may be more covert.

For instance, among the guards, a person who is a cellhouse guard may as a matter of fact have more leadership qualities and more influence with inmates than a person who is a lieutenant. And so you have to distinguish between formal leadership structures, informal leadership structures, whether it is overt leadership, covert leadership, and there are considerable variations in between.

Q Does it follow from what you are saying, then, that relationships between inmate leaders and the staff are not always or generally hostile?

A Oh, no. As a matter of fact, I would say the vast majority of the relationship between inmate leaders and the administration, while I wouldn't describe them as warm and friendly, they are moderate, functional, task oriented and relatively neutral.

Q Cooperative?

A Oh, there has to be a certain degree of cooperation. There are different styles of administering prisons.

Statesville Penitentiary was an extremely formal prison where the prison administration didn't trust its own staff, and so they would say, "Never [17] address an inmate except to give an order." And they would say to all of the inmates, "Do your own time."

These were attempts to fragment potential social relations. On the other hand, in other prisons, in order to have the conventional influence, travel from the represent-

atives of the community, namely the guards and the prisoners, you have promotion of active social interaction, and hopefully constructive influence between the staff and the inmates, so part of that depends upon style. But there is—there are elements of both friendliness and hostility inside of that situation, because in the last analysis, the administration of a prison is a superior caste to an inmate body, which for the most part is a subordinate caste, and there are certain lines that you do not cross in either direction, but it does not follow that every man's hand is raised against every other man every minute of the day.

Most of the time it is a very normal kind of a situation.

Q In your view, are press interviews with inmates likely to win for them significant influence over their fellow inmates that they otherwise would not have?

[18] A I would say not in the absence of talents and qualities that the inmates would possess in any case.

And secondly, it might, if the administration responds to the fact of their having been interviewed by the press in such a way as to attribute qualities to them that they don't really have, that is you can, in effect, be like Dr. Frankenstein creating your own monster, so to speak, by attributing significance to a phenomenon that it may not really have.

So the fact that prisoners are perhaps interviewed by the press is not itself sufficient to confer leadership, although it may on other grounds.

Let me give you an example. For instance, I knew Nathan Leopold very well in Statesville Penitentiary. He was an object of a great deal of press attention, and there were constant attempts to interview him, and he acceded to that on various occasions. Now, Leopold was a talented person and he had a responsible position in the prison, but I would never consider him to be a prison leader in any sense of the word. He was much too remote and too intellec- [19] tual and isolated for that kind of thing.

So he had a great deal of press attention in the same way as when you get a spectacular kind of mass murderer who has a sentence of a considerable number of years,

from time to time the press recalls his existence, and somebody may go down on assignment and say, "Well, let's see how so-and-so is doing," and he will be interviewed. But that wouldn't confer leadership on him in any way.

On the other hand, he might be a person who was known, and let's say a leader on the outside of a gang or someone whose crime had required considerable organizational ability or he may have been someone who has given rise to a court case that poses some complex issues without the help of a lawyer, and the press pays attention to that, and if they play into that, because there are already other qualities there, there may be some degree in that.

Q If who plays into whose hands?

A I say the press could, if that kind of thing was going on anyway, but it can't create a denovo.

Q How is the phrase "right guy" used in discussions in prison life? What is a "right guy"?

[20] A Well, a right guy concept is a term that is used in a good many prisons, I suppose, for a person who has some degree of general recognition by both the inmate body and by the administration. I think in Statesville they were called "standup guys," and they tend to be persons who can take care of their own concerns pretty well; they are usually fairly tough in a physical sense, but that is not the significant element.

The significant element is that they are articulate, they understand the prison and how it operates, and in a crisis, they frequently play mediating kinds of roles, and can articulate some elements of what the inmates have to say, and contrarywise, can carry from the administration the responses. They have—

MR. KATZ: Excuse me. The term "right guy" that you are using refers to an inmate?

THE WITNESS: Yes. And it could be used adjectively about a guard, for example. They might say he is a right guy, meaning that he shares those similar qualities. So it is something really about people's personality as human beings.

[21] BY MR. COOPER:

Q But principally it is used to refer to particular inmates?

A Well, it is a concept that stuck to inmates in the prison context.

Q Right guys tend to be leaders among the inmates in certain types of situations, is that correct?

A Yes, I would say they tend to be leaders in certain kinds of situations, not for every purpose necessarily, and maybe not even the most significant leaders. It depends very much on the situation usually.

Q How does an inmate come to be recognized as a right guy by other inmates? How does he attain that status?

A Well, it is a question, really, of personal style, personal qualities and how he has managed himself, and where he has stationed himself in the institution. A person can be a right guy in a clique of four men who are in the hole together, so to speak.

Just like he can be a right guy in the yard in a relatively free situation. So it depends a great deal on his personal qualities, but it can also [22] in some degree depend upon what the situation catapults him into or what the situation enables him to do. I would say he is a person with social skills predominantly.

Q Can press interviews confer on an inmate right guy status that he would not otherwise have?

A No, I don't think so. No, there are inmates who are known as "cradies" or "dings" who are considered unstable, persons of unpredictable behavior or people who are irascible or who are creepy in personality, and I don't know how many times you interview a guy like this, you couldn't convert him into a right guy.

The press cannot confer that kind of status on a person who is lacking those qualities.

Q Now, are press interviews in normal times likely to have a significant impact on the power relationship between the prison administration on the one hand and the inmate leaders on the others?

A No, I don't think so.

Q In your opinion, what influence are press interviews likely to have on the leadership position on the assertive politically militant inmate such as a George Jackson or a Bobby Seales?

[23] A Well, the only thing that might be said about that is that it depends, I suppose, on whether the press is responsible in how it relates itself to those kinds of inmates. And if those inmates have something to say that has merit and substance to recommend itself, then, they would give somewhat wider currency to that.

But if what such an inmate had to say was pure fantasy or paranoid projections or simply silliness, why, then, they can only give currency to that, but it would be seen for what it was. So I would say, to make an analogy, if a militant or assertive prisoner is saying the kind of things about prisons that a responsible warden or a responsible Attorney General of the state would say anyway,—because he is criticizing that which it objectively criticizeable—then it is possible that what the inmate says to the press, gaining currency, could be seen as something that was undesirable to the prison administration, but in my view, if they were responsible prison administrators, they would be addressing those problems and would be volunteering that information himself in order to deal with it.

So, I don't see how the degree of militancy [24] or assertiveness—how that in itself being interviewed by the press can add any new elements, so to speak. A person has to have something to say, and what he has to say has to recommend itself to other people in some kind of a way before it can have any kind of an impact. And if what he says is irresponsible or fantasy—

Q It won't have much impact on his position vis-a-vis other inmates?

A Yes. Or on the prison administration, also.

Q Do press interviews make such—

A Before we go on, I will just cite you one example: When I was the Assistant Warden of the County Jail, a man from the pressroom called me up and said, "I have a discharged inmate here who is telling me some very interesting stories."

And I said, "Yes, what is it?"

"Well, she tells us that the guards are going into the women's quarters at night and having sex relations with the female inmates."

And I said, "Is that so?"

And he said, "Yes." So he said, "What have you got to say about that?"

[25] I said, "Well, print it. You have an informant and she has told you some kind of a story. I am perfectly happy if you go ahead and print that."

Because I was so familiar with the prison and spend so many hours there that I knew it was simply out of the realm of being possible on any kind of systematic basis in which it was reported. I'd doubt very much if it could have been possible on an individual basis.

And so as far as I was concerned, I knew there was an irresponsible story. The pressman had called me up to see and assess that he was being responsible in his own way.

He didn't print it. Now, I don't know if that was an inmate leader or not that had reported that, but as far as I was concerned, I felt I had nothing to hide, and if as a matter of fact that something had happened of that kind, I would have preferred it would have come out, and I could have dealt with it. But I was quite sure it hadn't happened.

Q Well, can or do press interviews make assertive politically militant inmates into leaders when they otherwise wouldn't be?

[26] A No.

Q Can it make himself a leader by having an interview with the press and say these sort of things?

A No. I think I just commented on that a few minutes ago. No, it cannot.

Q I just wanted to clarify that.

When a politically militant inmate does have a leadership position, does his leadership pose a serious threat to the proper administration of a prison?

A No, I think the key to the sentence is "proper;" that is, I think that a prison that has a reasonably adequate staff and resources and is doing its job has nothing



to fear from a responsible press. And as a matter of fact, it ought to view the press as an ally in order to help it get even more adequate resources and staff and be able to deal with its problems.

In short, it is my view that the press in interviews with inmates or interviews with the staff or press investigation of the prison or of the prison administration is in the nature of opening doors that have too long been closed.

[27] One of the reasons that we have gotten to the impasse at corrections and the exacerbation of problems is because the correctional systems have isolated themselves from large segments of the public and have tried to put forward through the control of the communications what are essentially distorted images of the nature of the prison problems. And it is my view that the press can be the greatest ally for the rational improvement of prison administration structure in this country than probably any other single factor.

Q Does the presence within an inmate's population of someone like George Jackson or a Bobby Seals necessarily have a negative impact on the rehabilitation of other inmates, or may it in some circumstances—may the presence of such a man in certain circumstances have a positive impact on rehabilitation?

A I suppose it depends on the kinds of human beings that the prison system wants to produce. If you want to produce persons who are only unfit for a competitive society, who are incapable of curiosity and managing the solution of their own problems, in short, if you are in the business of manufacturing [28] passive personalities, and if that is your view of rehabilitation, then I would say that anything that made inmates more curious, more questioning, more assertive, would be seen as a threat.

On the other hand, in a free and pluralistic society, such as we feel we have in this country, which is based on the ideology of free enterprise and individual effort and so forth, anything that would contribute to giving persons a stronger self-conception of themselves, a sense of dignity and ability to come to more effective grips with the problems in a free community, would be seen as

rehabilitative. So I think a great deal depends on what your orientation is.

My own preference is that persons would be fitted for the kind of free life that they as a matter of fact have to face in the future, and that requires that they have the capacity to make their own decisions and to try to get ahead in a competitive world.

Q And with that view of the goals of rehabilitation, you would say that in some respects, having a politically militant inmate who has influence with other inmates can contribute to rehabilitation, is [29] that a fair conclusion to make?

A It contributes in the same sense in which—you can say that the Bill of Rights of the Constitution is a dangerous instrument because it makes a lot of inconvenience and troubles for a lot of people. But it seems to me that that is what this country is about, and that is you ought to take some degrees of risk; that you ought to have some degrees of freedom; that the critical faculties of people, that their competitive abilities, that their individual ambitions and so forth ought to have some scope for development so that they have the requisite for survival in the free and legitimate community.

And insofar as militancy tends to counteract the many pressures towards what is called institutionalization, the turning of people essentially into passive vegetables in the prison system, I view it as constructive.

Q From a correctional point of view?

A From a correctional point of view.

MR. COOPER: Would you mark this as Mattick Deposition Exhibit 1.

[30] (WHEREUPON, said document was marked Mattick Deposition Exhibit No. 1, for identification, as of 11/9/72.)

BY MR. COOPER:

Q Professor Mattick, I hand you what has been marked as Mattick Deposition Exhibit 1, and ask you whether or not you can identify it for the record?



A Yes. It is an article entitled "The Prosaic Sources of Prison Violence," which was published by the law school from the University of Chicago in a series of occasional papers published by the faculty of that law school.

Q And you are the author of this document?

A I am the author of that document. It was published at the time when I was at the University of Chicago.

Q And what is the subject matter of that article?

A The subject matter of that article is that it tries to shed some light on the processes that contribute to prison violence, and particularly in the wake of the major violence incidents that have [31] taken place in Pendleton Reformatory in Indiana, Raiford Prison in Florida, and the Attica Prison in New York.

Q And what conclusions did you reach as reflected in this article on the prosaic sources, as you call it, the prosaic sources of violence?

A Well, the prosaic sources of prison violence is that contrary to the popular folk wisdom that violence is fomented by prison conspirators, prisoner conspirators or inmate leaders, rather violence grows out of the very natural day-to-day processes of interactions. And by that I mean such things as the slow shift over a period of time of sentencing practices in this country, so that many persons who formerly are sent to residential institutions are now being placed on probation or into a variety of community-based treatment programs like conditional release, work release, vocational training of some kind or another, and that this changed the character of the residual prisoner population over a period of time; that similarly since the period of World War II, that there had been considerable internal migration in this country, which changed the racial composition of the northern cities, as is true [32] of all waves of migration to the cities in the history of this country.

Among those that are the last to arrive are the disproportionate; part of their numbers get into conflict with the law and wind up in prison, and it also changed the character of the prison population over a period of time; that it is not a question so much of a new breed of prisoners being in prisons, which are fomenting trouble

in a way that trouble had never been fomented heretofore, but rather that it was a new mix resulting from these migration waves on the one hand and the change in population as a result of differential sentencing practices. And that had to be combined with the fact that in most prisons, they tend to be located in a relatively rural area, where their staffs tend to be predominantly lower middle class whites, and that most of the prisons serving urban areas have populations that are disproportionately black or representative of minority groups, and that this brings two different styles of life together in kind of a closed situation.

And that therefore, the management of [33] day-to-day affairs becomes a matter of some skill and sophistication. So that in such mundane things as the proportion—the number of prisoners who are discharged every day, that is disruptive of the prison social structure; that if you start a new prison education program and assign a number of inmates to that, which disturbs the internal social structure of the prison.

If you discontinue a prison industry, for example, and redistribute your population internally in a prison, that tends to disrupt the internal social structure of the prison. And that inside the prison, both the inmates and the staff develop very complex and intricate kind of mutual dependent social relations.

Depending upon how you manage the disruption of those relationships, you can prevent violence, if you do that well. But if you do manage the prison without insight into those problems, what appears to be irrational outbreaks of violence are really the consequence of these kinds of routine disruptions that haven't been well managed.

So that if, for example, something that happened in this state back in 1948: They built a [34] new prison, and when it came time to do some of these skilled work of carpentry and plumbing and so forth, they transferred from Menard Penitentiary the 15 most highly skilled industrial inmates that were in that prison structure to help open the new prison. Well, when they did that, there is no telling how many persons were disappointed in the kind of social expectations that it obtained when that

social structure was intact. The people who had been in the habit of getting illicit goods, the people who had been in the habit of being on newspaper delivery chains so that they could get the newspaper down the line from somebody else; people who had been in the habit of communicating between one prisoner and the other, whether that reflected homosexual affairs or whether that simply reflected normal communications, that transfer of those 15 inmates simply raised the level of tension enormously because so many people were kind of at odds.

And an incident occurred in the dining room which ordinarily would have been contained as a relatively routine outbreak of a fracas, but now with the level of tension raised, because of this, it broke into a major riot. And it had nothing to do [35] with leadership; it had nothing to do with a conspiracy. This was simply a kind of a self-prison administration that you could simply disrupt a prison at any time you wanted to with any degree of speed and that it wouldn't have any consequences for you.

Well, they learned the hard way that that is not the way to do it. And that kind of thing happens very often, but it can only be seen in retrospect, and so people say, "I can't understand why the prison blew up. This is only a man who threw a cup across the dining room and hit somebody else in the head and it bursts into a major riot."

That is because something happened last week or three weeks ago, which is only working its way out, and that which happened was something that was quite routine, quite mundane, but it had consequences that it simply did not anticipate.

Those are some of the things I had in mind as the prosaic sources of prison violence. They are not dramatic. They are not revolutionary. They are not the product of rhetoric. They are not the product of conspiracy. They are not the product of individual acts or gratuitous aggression. But [36] rather it is a much more complicated situation.

**Q** What role would you ascribe to inmate leaders and conspiracies in producing violence within your picture of how violence arises?

**A** Well, nothing is out of the realm of the possible, but you can really see a prison community as largely consisting of a double conspiracy; the administration and staff are in a constant conspiracy to keep the inmates in, and there is a constant level of conspiracy on the part of the inmates as to how they can ease their situation and how can they get out.

Now, that is constant in the situation, and that is simply there for a question of management—how do you handle it? Now, over and above that, occasionally you may have somebody that may be very imaginative and has access goods so that he can put together a rope or a ladder or that he can arrange some kind of transportation outside or something of that kind.

But that is not very usual. It is not the thing that contributes to prison violence. It may occasionally contribute to an escape that is well thought through, and it usually reflected somebody's [37] analysis of a prison routine that had a gap in it.

**Q** In your view, do politically militant inmates such as Black Panther types play a significant role in causing violence and disruptions in prisons?

**A** No, I don't think so. I think they do a considerable amount of talking, and there is a considerable amount of hate in the rhetoric, but insofar as the rhetoric is contained behind the 20-foot wall, it doesn't really make much difference what it is that people say inside; if anything, I view it as kind of a form of psychological ventilation, a way of getting a certain amount of heat and energy out in a relatively harmless way.

**Q** Would a press interview in which an inmate expresses violence and engages in revolutionary militant rhetoric result in disturbances or violence within an institution? Would that be a significant causal factor?

**A** It is very doubtful. I think that there are always a number of unstable inmates or not very bright inmates in an institution who would respond, let us say, either

to an aggression on the part of the staff, to an opportunity that was created of [88] some kind in a shop, who might respond to militant rhetoric, who might respond to a loss of a baseball game in today's recreation. But those are all of a piece; those people are likely to be set off anyway because they have a relatively low threshold.

But you couldn't attribute it uniquely to either the fact that there was a militant or revolutionary rhetoric inside the prison or that it was reflected second-hand by an interview with a prisoner that has now come back in the form of a newspaper.

Q If an inmate were in an institution where there may be some racial problems and an inmate—a militant inmate—gives an interview in which he highlights those racial problems, and the report of the interview comes back to the institution, would you say that the interview in that kind of a situation is likely to produce a heightened consciousness of racial problems or greater tension from them than would otherwise exist?

A Maybe as a temporary phenomenon it would occasion considerably more discussion, but it would be very similar to—suppose there had been a spectacular bank robbery in a nearby community that was [89] well reported, or let us say that officials that were publicly appointed or elected officials were caught in some kind of a scheme where there was graft, corruption or misappropriation of funds, that would have certain heightening of discussion and consciousness and so forth.

In other words, I think it is an evanescent thing. I don't think in a racially mixed kind of a situation, particularly inside of a prison, that you would have to have a newspaper to tell inmates that these are racial problems inside the prison. They know about that.

But they will respond on the immediate occasion as they would to these other ranges of events that I mentioned.

Q So, what you are saying, then, if I understand you correctly, is that an inmate group will respond to news events that interest them whether they emanate from a particular inmate in their own institution or perhaps something far away if it attracts their attention?

A They are like the rest of us, except they have a little more time on their hands, and they have kind of a closed situation in which a certain amount [40] of interaction and discussion can take place. And if an event that has some particular interest or is related to the situation in which the prisoners find themselves, that will be discussed; that may cause some flurry of interaction and discussion that may be somewhat more heightened over a period of time, but I think it is an evanescent kind of a thing.

They respond to the news. For instance, let's take an example. When Witherspoon won his case, there was a certain amount of discussion about that. When Leopold was finally paroled, when the California Supreme Court declared the death penalty unconstitutional, I am sure there was a certain amount of discussion.

I think when stop and frisk was passed, I think there was a certain amount of discussion.

Q Are you familiar with the Federal Bureau of Prisons and the institutions it administers?

A Well, I visited a few, and I would say I know more than the next citizen, but I wouldn't consider myself an expert particularly on the Federal prisons, but I have been in Terre Haute several times and I have been in the Federal institution [41] in Springfield because it is a specialized institution.

I know or have known in the past some wardens of some Federal prisons. I know people who are in administrative positions in the Federal Bureau of Prisons, so I have some or more than the average citizen's knowledge of that subject.

Q From what you know about the Federal Bureau of Prisons, do you have any reason to think that the views you have expressed about the leadership among inmates and about the causes of violence or the sources of violence in the prisons would not apply to the Federal prisons; any reason to think that it would not apply to Federal prisons?

A No, I don't think that there would be any reason why it would not apply. I would say that if anything, that the problems of the Federal prisons are considerably



more moderate than those of the state prisons because of the selection of prisoners that are subject to Federal law as opposed to those that are subject to state law.

For instance, murder, assault and rape by and large, except if that occurs on Government property, are state charges, and so you tend to get a greater [42] concentration of persons with a higher violence potential in a state prison, whereas the Federal prisons with the interstate nature of some of their offenses, with the mail offenses, with the Internal Revenue type of offenses, with the organized crime type of offenses. And there is a kind of a white-collar caste to it in that prison population that no state prison population has.

And so I would think that the Federal prison system could tolerate far better many of—what should I call them—many of the measures that frighten an inadequate state prison administration, the Federal prisons, with their greater resources, with their greater openness are to be less frightened of the press in my view.

They have less to fear.

Q From your knowledge of Federal prisons, are there variations in the way individual Federal correctional institutions are administered, or are they uniform?

A Well, I think at the written policy level that the Federal prisons strive for uniformity with administration, but every prison to some degree reflects not only the personality and style and back- [48] ground and training of its chief administrator—if he is a warden or whatever he is. And also to some degree the lifestyle of the region in which the region is located, because although there is a considerable amount of transferring of prisoners inside the Federal prison system, in any one prison, the majority of the prisoners will be from that region.

And insofar as that is reflected in some commonality, that also gives some kind of a distinctive tone or flavor to the prison. And so there is some variation in practice, in behavior and in implementation of policy, but I think that they try to be uniform and even-handed so far as the published works are concerned.

Q In your view, are the dangers of increased tensions and whatnot that might result from differences in indi-

vidual administration of a policy that gave wardens discretions, some discretions as to the granting of interviews, would those dangers be so great as to justify a total prohibition of interviews under all circumstances in the interest of uniformity?

A You mean—I am not sure I understand the question.

You mean if I am willing to agree that [44] uniformity is the chief value—

Q Or should it be?

In your view of appropriate correctional policies, is the value of uniformity such that it is better to have—from a correctional point of view—the policy that prohibits all interviews—

A No.

Q —than a policy which will vest some discretion in wardens to grant or deny interviews so that there will be some variation from one institution to another, such that inmates who are transferred from one institution to another may experience differences in the rights and privileges that they have in various institutions?

A Well, they will experience those anyway, because of the resources of the different institutions, the nature of the guards, staff, and the administrator, because of the nature of the inmate population that they are with, there will be some differences.

I don't see how interviews with the press with inmates occasionally—because I don't expect the press will be there systematically to interview every prisoner every day, but that would [45] a factor to which one ought to attach some significance, that it becomes the reference point for the administration of the prison.

No, I think that is a relatively minor discretion and not only ought to be exercised, but in my view, as I said before, I think that the press has a positive contribution to make by helping to inform and educate the public about the nature of prisons and prison life.

So that the public can come to a greater understanding and some support of what it is that penal administrators are attempting to do in prisons.

Q I just have a couple of final questions.



As you consider the factors that contribute to prison violence and disturbance, what significance would you ascribe to press interviews with inmates in this process?

A Practically none. I don't see it as the significant factor or a factor of any particular significance.

I would say insofar as there is some perceived degree of risk by a penal administration, that they may be nervous about the press on other grounds, that the public interest would be best [46] served if that risk be taken.

Q Okay. Professor Mattick, are you familiar with a volume entitled, "Theoretical Studies in Social Organization of the Prison", published by the Social Science Research Council, 280 Park Avenue, New York 17, New York?

A Yes.

Q Pamphlet 15 and published in March, 1960?

A Yes, I know the publication. I read it. I reviewed it for one of the professional journals some years ago.

I have had occasion to recommend it to students and others in the field.

Q What is your view of the value of the analysis and views put forth in this volume on the matters it covers?

A Well, that pamphlet consists of a series of seven or eight articles, as I recall, and among those authors are among the best minds that have been turned to the analysis of prison administration and inmate social structure of any that this country had produced.

MR. COOPER: Okay. Thank you very much. I have no further questions.

[47]

## CROSS EXAMINATION

BY MR. KATZ:

Q Professor Mattick, have you in the last few years had occasion to visit many penal institutions?

A Yes.

Q Which ones have you visited, say, in the last five years.

A Well, Joliet—the old prison at Joliet, Statesville Penitentiary, the Cook County Jail, the House of Correction, the Audy Home for Juveniles, the Peoria City Jail, the Livingston County Jail, Menard Penitentiary, Springfield, the Federal Institution in Springfield, Missouri—

Q Is that the medical center for Federal prisoners?

A Yes. I spent an entire week at the New Orleans Parish Prison in February of this year as a technical consultant. In the years 1967 and '68, I conducted a survey of all of the jails in the State of Illinois, 160 of them. And although I didn't visit all of the 160 of them, I visited a number that were in the Chicago area.

So I would say I had reasonable exposure [48] to the prisons.

Q In these visits, did you have occasion to talk to inmates at any great length?

A Oh, yes. As a matter of fact, I would not feel that I had an adequate understanding of prisons unless I spoke to both prisoners and the administration.

Q Do you think it is an important consideration in the management of a penal institution that all inmates be treated with an even hand?

A I don't think that in the nature of the case they can. I think it is an ideal that might be striven for, but—for instance, let's say an institution that has a part-time doctor or that has a psychiatrist coming in three days a week or that has a series of counsellors who have a case load of 75 prisoners apiece or a veteran's officer who deals with veterans and so forth, it happens to be the nature of the case that there is some individualized treatment, and that competes with the value of equal treatment as the individual treatment ideal.

Q But you would say that that is an ideal that should be striven for; that is fundamentally equal treatment of inmates without discrimination?

[49] A No, I would say one tempers the other.

Q You would say, of course, that it is also an important consideration in the administration of a prison that security be maintained?

A Yes.

Q I think your testimony thus far has established that by and large, prisons are institutions in which an atmosphere of great tension generally prevails, and there is always a potential for violence, is that not so?

A No. I said it would vary considerably within the institutions. There are institutions that have a relatively relaxed atmosphere and there are those that are highly tense.

I have been in both.

Q Do you feel that a policy with respect to interviews of inmates by the media in which the superintendent or warden of a particular institution is given considerable discretion in deciding whether or not to grant interviews is a wise policy?

A No, I don't think so. I think the policy ought to be uniform; that the press should have access to the prisons and they should have access to the inmates. And if you will accord individual discretion, that those wardens who are either the least comfortable in communicating with the press, or who—maybe in situations that are difficult for them to manage—will exercise the discretion in such a way as to exclude the press.

Q Apart from the situation where the individual inmate himself does not desire to be interviewed, can you think of any situation in which you in a particularized situation, would deny a request by the media to interview an inmate?

A Yes.

Q What would those be?

A If there was a contagious disease rampant in the prison.

Q Anything else besides that?

A It is possible if you were in the middle of some kind of a major disturbance that you would have more important things to do at that moment than being deflected by the press, although—

Q There, you are talking about preventing or precluding interviews to all inmates during—

A I am speaking about emergency situations while it is going on.

I have been through three riots, myself. [51] And in one of the riots I had the press with me while I dealt with it. And the other two, I had them in the reception corridor outside so that I can communicate with them immediately as soon as the situation was under control.

I let the press in to talk to the inmates so that they could see the degree of damage that had been done and as to whether there was any gratuitous whippings or anything of that kind, because I felt it best served me to be open in those conditions, because I knew I was not guilty of any misconduct.

Q Do you feel that there is a possibility that given a situation where a militant type prisoner gives an interview, the result of which is a news story which might be considered inflammatory which works its way back into the prison, is there a possibility that such a situation could lead to some type of violent confrontation?

A That is no different than the free community. In other words, free speech is a dangerous thing, and just as something that might be inflammatory might have some effect in the civil community or the slum community or among some special interest group, there is a possibility that it could also have [52] an effect on a prison population, but it is not a unique function; that is a function of the dangerousness of free speech and a free press.

Q But the possibility does exist?

A Well, I wouldn't exclude any possibility.

Q All right. A while back you spoke of leadership roles which may have been assumed by prisoners resulting from various circumstances, and I think for the most part, we were talking about what you considered positive or affirmative types of leadership.

Now, do you feel that there are inmate leaders whose leadership role is negative in character?

A I think there are those who attempt that and have that kind of character, yes.

Q And do you feel that this phenomenon has been on the increase in the last five years?

A No, I don't think so.

Q Do you feel that assuming the existence of an individual who has been cast in a negative leadership role, do you think that his negative leadership role could possibly be enhanced by attention being given to such a person by the news media?

[53] A It depends on whether the press is responsible in its relationship as to how it reports that. And I think that is something that the prison administrator might take up with the editor or the publisher.

But as I said, if the press reports something that someone said, the fact—it is a fact that he said it. Now, it can also be evaluated as to whether it is true or whether it has any substance or whether it has any merit.

Q Do you feel it would be proper for the prison administration to intercede with the media as to what they should print?

A I think they are entitled as any other citizen to tell the press what they think the role of the press is and as to whether they handled something responsibly, sure.

Q And you don't feel that this might be construed as an attempt of censorship of a form?

A They have a forum every day to reply to me. I have dealt with the press like that all of the time. They are still a free press, and certainly the fact that I might approve or disapprove of certain portions of them. It just means that they are pleased or displeased from day to day, depending on [54] how I respond.

Q Do you believe that at least some prison disturbances which you experienced in the last few years could have been attributed to inmate conspiracies or the influence of persons, inmates acting in a negative leadership role?

A And that's the only cause?

Q No. You stated earlier that it was your feeling that for the most part this was not the case, but do you have any knowledge of instances where this has been the case?

A No. I have no knowledge of that kind. And if someone told me that it was so, it would be highly

suspect, because I don't think that inmate leadership can create that kind of situation. There has to be a substrate of dissatisfactions, of disruptions, or the interests and fortunes of a number of people who feel they have been affected by some policy or by some administrative rule or by some dramatic example of interaction which creates an audience of some kind.

Then, leaders react to that as do persons who are non-leaders, but before you have some kind of disruption rather than some individual kind of [55] aggression, there has to be some commonality, and I don't think you can manufacture things out of whole cloth.

They are relatively complex and relatively large scale events.

Q Are you excluding the possibility that inmates might manufacture a disturbance simply for the purpose of making things difficult for the administration or attempting to overthrow the prison authorities?

A I don't know what you mean by "overthrow the prison authorities," because that is a question of whether you get beyond the walls with what you do. But I do think occasionally that groups of people might create a diversion of some kind because there may be some tactical purpose like an escape, going someplace else, but that is kind of an ad hoc, short-lived, and limited kind of event where they count upon the administration filling the reaction role by responding to the diversion, so if the administration falls into that kind of a thing—that is what I meant by saying sometimes administrators are manipulated by clever inmates.

But a prison administration that knows its [56] business, that has its staff adequately deployed, that has good supervision and has a good program and that kind of thing will almost never have a problem.

Q In other words, you feel that there would almost never be a prison disturbance of any kind in what you consider to be a well-run institution?

A I think a well-run institution would be relatively relaxed and relatively peaceful.

Q And this is regardless of the pattern of radical or militant proclivities of some of the persons confined there?

A Yes. I don't think that makes any difference at all. I think it can be seen in the prisons today. They have a black studies program. They have classes that amount to classes in revolution. They have had the TV cameras in there while the classes are going on. The officers are standing around while the kind of rhetoric that is seriously disturbing the people is going on. The officers were interviewed afterwards and were asked, "How do you respond when you hear all of these people calling you pigs in the middle of their political analysis, and so forth?"

[57] Well, they say, "We didn't like it, but after all, they are behind the walls."

And that depends a great deal on training and enabling officers to handle what might be a distressful situation without that kind of training.

Q Do you feel that the values which you have stated would be served by media access to penitentiaries i.e., a public awareness of what goes on down there and so forth could be equally or almost equally adequately served by a policy which while it would not permit private interviews with inmates, it would nevertheless allow generally unrestricted visits of media people to institutions coupled with free and uninspected correspondence privileges between prisoners and the media?

A No, I don't think so. I think our entire Government is founded on kind of a suspicion of authority, and I think that is very healthy, and I think that is one of the major roles of the free and responsible press, which is to keep authority responsible.

And individual communications or unrestricted visiting trends to kind of individualize communications and focus on personal problems whereas the most serious [58] problems in corrections in prisons are systematic, and for that you have to have a relatively disinterested view that it takes to look at the overall view in attempting to be analytical about it.

Most people who are inside of a situation are so caught up in the day-to-day affairs that they are incapable of rising above it in such a way that they can become analytic and to be able to understand it in such



a way as to think of alternatives and so forth and so on; that is, no matter how adequate, for instance, a judiciary we might have to respond to prisoners grievances on an individual basis, it would be my view that while that would contribute to some degree to some aspect of penal reform, it would do very little about the prison situation, because for that, you have to have a larger view than the individual case, and so I don't think that that would be adequate.

I think that the press has a definite and positive role to play in penal administration and that it is largely because of its exclusion in the relative isolation of the prison systems of this country that we have such difficulty in trying to deal with the problem.

[59] Q Well, the question I asked, Professor, though, did not presuppose exclusion of the press as such. I posed the situation where press representatives are allowed to visit prisons regularly and to walk around and to see what goes on, and to have free written communication with inmates.

Do you feel that it is indispensable for the media to discharge its role that you feel it should discharge; that they be allowed to have private confidential interviews, face to face interviews with inmates, or do you feel that—

A Prisoners being willing on a voluntary basis?

Q Yes.

A Yes. I think it is essential. I think it is very much like the legal profession, for example. The legal profession has an ethics committee and a malpractice committee and so forth, and from the outside, that is viewed pretty much with jaundiced eyes by the public. They say those people are judges in their own cause, there is not an outside uninterested party.

The same is true of the medical profession. Any time that a group becomes the judge in its own [60] cause, the result of that cannot help but be suspect, and for that reason, the press plays the role of the third party for the public in such a way—and while I would not say that the press is always objective, I wouldn't go that far, or that it doesn't have a point of view, never-

theless it predominantly plays that role and it ought to play that role, and especially in closed situations like mental hospitals, like prisons, like orphanages, juvenile institutions, so that you can finally get some ventilation and public understanding.

Without that kind of thing, you have a perpetually astounded public that wonders how can these things happen? Here we thought our tax money was doing this and that and the other thing, and here we thought that adequate people were here, here we thought that every prison had a psychiatrist that was treating people, here we thought that they had a doctor and nurse in the institution, and come to find out through some inadvertence, or because there is a suicide or something of that kind, that the situation is really much more impoverished than the people thought it was.

Q Could not this type of information be (61) communicated in writing between prisoners and the media just as well as in face-to-face interviews?

A Well, I don't think so. I think that the degree of articulateness and writing ability would probably make for a selection of prisoners in favor of those that were more literate and more in the middle class kind of direction and so forth. It would leave an important point of view unexpressed.

But a prison situation in which inmates were free to assist other inmates in writing—

A We are straining. We are straining. If you are seeking to make some kind of one in 10,000 kind of exception, I will give you that. But if you are interested in my opinion, the question is that by and large it is far more preferable than the press play an active role of oversight and investigation and communication and information and education with reference to penal institutions.

MR. KATZ: Off the record.

(WHEREUPON, discussion was had off the record.)

BY MR. KATZ:

Q During the time that you were actively employed in prisons, were there any policies in effect [62] at that time with respect to media access?

A Well, let me say that in the prison in which I was able to control that policy, it was.

Q This was in the Cook County Jail?

A Yes. It had absolute free access. As a matter of fact, I committed newsmen anonymously into the prison cell blocks, and that condition was not known to other prisoners—who they were—or to my employees. And I gave them a free hand to write whatever they wanted to write, because I was interested in communicating that problem to the public.

Q And you were the Deputy Warden at that time during that period?

A Yes.

Q Who was the Chief Warden?

A Well, we had two of them, but we had an understanding with the Sheriff that I was the person who was technically competent, so I ran the jail. The Warden was the person that dealt with other agencies and dealt with the outside public in a certain way, but with what went on in the jail—nothing could happen in that jail that I didn't approve of.

[63] MR. KATZ: Thank you. That is all I have.

MR. COOPER: Just one question.

## REDIRECT EXAMINATION

BY MR. COOPER:

Q Your policy of allowing the press freely into the Cook County Jail, did that cause you any problems? Was that a satisfactory policy in your experience with it?

A It was satisfactory. What was unsatisfactory about it is that I couldn't drag any of those people into the jail. They ate my food every day in the Warden's dining room, but I said, "For God's sake, get into those cell blocks and talk to the prisoners."

And they said, "Oh, you know, it smells and this and that." They were reluctant to go in. But any time they wanted in, I was more than happy to have them.

MR. COOPER: Thank you.

There is just one thing I want to explain to you: You are entitled to see a copy of this and sign it and make sure it is accurate. [64] In most cases witnesses assume that the reporter took it down correctly and they waive the formality of signature.

You could have the option. You can make the decision whether you want to see it to make sure that he took down everything that you said accurately.

THE WITNESS: Now, let me ask both sides: Is there an important fine factor in this matter where the delay of the reproduction—

MR. KATZ: We will waive signature.

MR. COOPER: We are entitled to signature, too, and we will both waive it.

THE WITNESS: But I will get a copy in any case?

MR. COOPER: I will make sure you get a copy.

THE WITNESS: All right. But I would like to have a copy.

MR. COOPER: I will send you a copy.

THE WITNESS: All right. I won't insist on signing it first.

(AND FURTHER DEPONENT SAITH NOT.)

[65] )  
 STATE OF ILLINOIS )  
 COUNTY OF COOK ) ss.

I, TERRY KUPPERMAN, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify that heretofore, to-wit, on the 9th day of November, A.D., 1972, personally appeared before me at Room 4060, 618 South Morgan Street, Chicago, Illinois, HANS MATTICK, a witness in a certain cause now pending and undetermined in the United States District Court for the District of Columbia, wherein WASHINGTON POST CO., et al., are Plaintiffs and RICHARD KLEINDIENST, et al., are Defendants.

I further certify that the said HANS MATTICK was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by said witness was reported stenographically by me, in the presence of the said witness, and afterwards reduced to typewriting, and the foregoing is a true and correct transcript of the testimony so given by said witness as aforesaid.

I further certify that there were present at the taking of this deposition MR. RICHARD M. COOPER on behalf of the Plaintiffs and MR. MICHAEL A. KATZ on [66] behalf of the Defendants.

I further certify that the signature of the witness to the foregoing deposition was waived by agreement of counsel for the respective parties.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 18th day of November, A.D., 1972.

/s/ Terry Kupperman  
 Notary Public, Cook County,  
 Illinois

My commission expires 7-29-78.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

WASHINGTON POST CO., ET AL., PLAINTIFFS

v.

RICHARD KLEINDIENST, ET AL., DEFENDANTS

STIPULATION

Plaintiffs and defendants, by their undersigned counsel, hereby stipulate that the following corrections be made in the transcript of the deposition of Hans W. Mattick:

p. 6, line 20	for "privisory" read "advisory"
p. 10, line 10	for "a" read "as"
p. 10, line 14	delete "been"
p. 10, line 20	for "molto" read "major"
p. 11, line 5	for "administer" read "administered"
p. 12, line 11	for "inactive" read "and active"
p. 13, line 35	for "parents" read "talents"
p. 19, line 15	for "opposes" read "poses"
p. 21, line 20	for "click" read "clique"
p. 22, line 18	for "present" read "prison"
p. 22, last line	for "Seals" read "Seale"
p. 27, line 14	for "Seals" read "Seale"
p. 29, line 12	for "or" read "for"
p. 33, line 3	for "proportioned" read "proportion"
p. 37, line 9	for "beyond" read "behind"
p. 38, line 6	for "contribute" read "attribute"
p. 38, line 13	for "they" read "there"
p. 38, line 19	for "of them" read "from them"
p. 39, line 11	for "they" read "there"
p. 41, line 12	for "forces" read "sources"
p. 42, line 4	for "male" read "mail"
p. 46, line 20	for "in" read "to"
p. 53, line 19	for "form" read "forum"

p. 54, line 18  
 p. 55, line 19  
 p. 56, line 1  
 p. 56, line 10  
 p. 56, line 15  
 to p. 57, line 2

for "effected" read "affected"  
 for "great action" read "reaction"  
 for "employed" read "deployed"  
 for "platform" read "pattern of"

p. 57, line 12  
 p. 57, line 14  
 p. 58, line 12  
 p. 58, line 16  
 p. 59, line 20  
 p. 62, line 5  
 p. 62, line 11

Professor Mattick stated during the deposition that he thought the program and the interview with the guards described here occurred at a prison in Canyon City, Nevada  
 delete "one"  
 for "unaffected" read "unexpected"  
 for "prisons" read "prisoners"  
 for "of" read "than"  
 for "justice" read "jaundiced"  
 for "asbolute" read "absolute"  
 for "communication" read "communicating"

An additional copy of this Stipulation is attached for insertion after the cover page of the deposition.

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**RICHARD M. COOPER**  
 Attorney for Plaintiffs

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**MICHAEL A. KATZ**  
 Assistant United States Attorney  
 Attorney for Defendants

November 29, 1972



ATTACHMENT

District }  
of }  
Columbia } 221

I, Norman A. Carlson, being duly sworn, do hereby certify that I am Director of the Federal Bureau of Prisons. As Director, I am responsible for the development and promulgation of the policies which govern the operation of the various institutions which comprise this Bureau.

In a recent affidavit submitted to this Court, I noted that the Bureau of Prisons was considering a revision of its Policy Statement 1330.1, which regulates contacts between federal inmates and institutions, and the news media. The revision has been undertaken in order to accommodate, in my judgment, two prevailing considerations: the communication of inmate grievances, complaints, and stories to the press; and the right of the public to know, through press coverage, of what is going on in correctional institutions. At the same time, we recognize that all correctional operations and programs must insure, to the greatest extent possible, the security of the institutions and the safety and well-being of inmates and staff members.

In response to these factors, a policy revision to permit inmate interviews was drafted. This revision was reviewed and commented on by the chief executive officers of all federal institutions. This past week, it was discussed by my administrative staff with the wardens of nine major adult institutions at a conference in Washington. This policy area was also a subject of discussion with over 40 state correctional administrators at a recent conference in Atlanta, Georgia, and it was reviewed with officials in the Department of Justice having a particular interest in this field.

Based on these discussions, I am of the opinion that personnel interviews with the press will cause an undue strain upon the facilities of most federal institutions. In addition, they would divert staff from their primary responsibilities relating to programming and security, with the consequence that these two areas of responsibility would be adversely affected.

The conduct of press-inmate interviews has been discussed with state correctional administrators, including many from those states listed by plaintiffs in support of their complaints. We learned that, in many states, the interviews are permitted at the discretion of the local wardens and superintendents, with virtually no guidance or standards. We felt that such state practices and experiences offered therefore no guidance, and that the possible consequences in such instances would be uneven application. One large state which had adopted system-wide standards has now returned to a policy of no interviews in view of difficulties arising from their previous policy.

We are nonetheless, as previously stated, of the opinion that prisoners and press should have a reasonable opportunity for exchange.

In the course of the policy review, it became apparent that these considerations could be accomplished by another means, i.e. sending all inmate correspondence sealed and unopened directly to the press and subjecting incoming to inspection only. Outgoing correspondence procedures will be accomplished by authorizing inmates to use the Prisoners Mail Box system for this purpose. Under this system mail is sealed and deposited in

special boxes. Envelopes deposited therein are collected daily, and forwarded unopened to the addressee. This is precisely the means which inmates have for sending sealed communications to the courts, Senators and Congressmen, and to various officials in the executive branch of government. The availability of this correspondence is made known to all inmates, and it is used extensively.

At the same time, we will permit press representatives to send mail to any inmate they choose. Matters initiated by inmates can be pursued in this manner and questions can be posed to the inmate, without limitation. Since we are primarily concerned about what comes into the institution, this incoming correspondence will be inspected, but only for contraband (drugs, weapons, and money, for example) and for content which incites illegal activity (escape and riot, for example). // it's  
NAD

We encourage all media representatives to visit our institutions, to observe, and to report their findings.

These objectives and changes in policy have been incorporated in Policy Statement 1220.1A, a copy of which is attached. It permits inmates, without limitation as to frequency, volume and subject matter, to send all information, complaints, and grievances they wish to any media representative, as defined in the policy statement, whom they name. It permits incoming correspondence from the press, with the minimum amount of restriction, as required for the security and safety of the institution. It encourages

the press to inform the public about corrections, not just in abstractions, but by visiting institutions, talking with staff and inmates, and discussing programs, activities, and problems with them.

*Norman A. Carlson*  
 NORMAN A. CARLSON, Director  
 Federal Bureau of Prisons

Subscribed and sworn to before me this 15 day, of February 1972.

*[Signature]*  
 NOTARY PUBLIC

My Commission Expires Feb. 15, 1974

STATISTICAL DATA REGARDING THE NUMBER OF FEDERAL PRISONERS IN BUREAU  
OF PRISON INSTITUTIONS IN THE FOLLOWING CATEGORIES:

	As of October 23, 1972				Average Hospital Patient Load
	Total Confined	Unsen- tened	On Parole	On work or Study Release	
Total . . . . .	21,930	697	386	189	891.9
<b>MAXIMUM SECURITY INSTITUTIONS<sup>1</sup></b>					
Atlanta . . . . .	2,118	2	-	2	25.3
Leavenworth . . . . .	1,940	2	-	6	23.0
Marion . . . . .	319	-	-	-	2.3
Lewisburg . . . . .	1,478	3	-	14	2.7
McNeil Island . . . . .	894	-	-	3	9.4
Terre Haute . . . . .	1,360	-	-	2	9.3
<b>MEDIUM SECURITY INSTITUTIONS<sup>2</sup></b>					
Ashland . . . . .	318	9	6	-	1.1
Sanbury . . . . .	727	35	3	4	2.3
El Reno . . . . .	991	8	-	1	9.8
Englewood . . . . .	332	17	26	-	1.8
La Tona . . . . .	736	1	1	1	2.0
Leopold . . . . .	1,017	17	-	3	13.1
Miles . . . . .	404	31	28	6	2.0
Petersburg . . . . .	384	8	11	3	2.9
Sandstone . . . . .	329	-	-	-	2.3
Tallahassee . . . . .	383	2	2	-	9.3
Terminal Island (Male) . . . . .	721	27	31	1	2.7
Terminal Island (Female) . . . . .	334	8	3	1	-
Tenahama . . . . .	386	4	4	2	0.9
<b>MINIMUM SECURITY INSTITUTIONS<sup>3</sup></b>					
Alderson . . . . .	342	32	-	3	10.3
Allenwood & Lewisburg Farm . . . . .	277	-	3	3	-
Elgin Camp . . . . .	429	-	31	23	1.9
Leavenworth Camp . . . . .	226	-	6	-	-
Leopold Camp . . . . .	322	-	-	4	-
McNeil Island Camp . . . . .	245	-	2	2	-
Montgomery . . . . .	243	-	2	-	1.2
Morgantown (Male) . . . . .	139	5	16	8	-
Safford Camp . . . . .	273	-	-	13	0.3
Seagoville . . . . .	423	-	63	2	2.8
Marion Camp . . . . .	81	-	-	-	-
Morgantown (Female) . . . . .	43	2	2	-	-
Ft. Worth (Male) . . . . .	340	17	44	6	2.2
Ft. Worth (Female) . . . . .	68	3	6	3	-
<b>DATAC</b>					
Pierson . . . . .	216	23	-	1	-
New York . . . . .	337	207	-	-	2.9
<b>HOSPITAL</b>					
Springfield (Hospital & Camp) . . . . .	992	138	-	7	708.1
<b>COMMUNITY TREATMENT CENTERS</b>					
Atlanta . . . . .	29	1	-	-	-
Chicago . . . . .	41	6	-	-	-
Detroit . . . . .	23	3	-	-	-
Houston . . . . .	29	6	-	-	-
Kansas City . . . . .	23	6	-	-	-
Los Angeles . . . . .	30	3	-	-	-
New York . . . . .	107	1	-	-	-
Oakland . . . . .	22	3	-	-	-
Oakland . . . . .	24	1	20	1	-

1. **MAXIMUM SECURITY INSTITUTIONS** are designed for the containment of individuals who constitute the greatest security risk and threat to society. Such institutions have a high wall or detaining fence equipped with manned gun towers which constitutes the security perimeter.
2. **MEDIUM SECURITY INSTITUTIONS** are designed for the detention of less serious security risk inmates. These double detaining fences and full-time employee surveillance constitutes the security perimeter.
3. **MINIMUM SECURITY INSTITUTIONS** have no gun towers and no detaining fence. Supervision and established boundaries constitute the perimeter.
4. **Work Farm and/or Camp.**

904 12/12







# A Model Act for the Protection of Rights of Prisoners

COMMITTEE ON THE MODEL ACT  
FOR THE  
NATIONAL COUNCIL ON CRIME AND DELINQUENCY

1972.

NATIONAL COUNCIL ON CRIME AND DELINQUENCY

## § 7. VISITS TO PRISONERS AND INSTITUTIONS

1 The director of a department responsible for the operation  
2 of an institution or a system of institutions for the confinement  
3 of prisoners shall establish rules and regulations permitting  
4 attorneys of record, relatives, and friends to visit and talk  
5 in private with any prisoner in an institution at reasonable  
6 times and under reasonable limitations. The institution may be  
7 visited at any time by members of the state legislature, judges  
8 of the criminal or appellate courts, the attorney general, and  
9 the governor.

10 Any other citizen may make application to visit an institu-  
11 tion and talk in private with prisoners if the applicant estab-

12 lishes a legitimate reason for such visit and if the visit is not  
13 inconsistent with the public welfare and the safety and security  
14 of the institution. The director may reject any such application  
15 if the visit or any aspect thereof would be disruptive to the  
16 program of the institution.

17 If application for a visit is denied, the person may apply  
18 to [court of general jurisdiction] for an order directing the  
19 head of the institution to permit the visit. Such order shall  
20 be granted after notice and hearing if it is found that (a)  
21 the person is a representative of a public concern regarding the  
22 conditions of the prison, (b) he is not a mere curiosity seeker,  
23 and (c) it is not established by the head of the institution  
24 that the visit, or any aspect of it, would disrupt the program of  
25 the institution.

620

ADAMS B. 11-11-1974, 20.  
Enclosure 1000

JOHN WARD N. MURPHY  
Director, Bureau of Corrections



STATE OF MAINE  
DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS  
ANGUS, MAINE 04916  
TEL. (207) 533-3101

*h/c/10/200*

October 8, 1974

Mr. Joseph A. Gildano, Jr.  
Williams, Gonnolly & Gildano  
1000 Hill Building  
Washington, D.C. 20006

Dear Mr. Gildano:

In regards to your letter of September  
27, 1974 enclosed please find a copy of our  
Policy governing access of news media in our  
correctional institutions. We trust this  
will be of some assistance to you.

Very truly yours,

*John W. N. Murphy*  
JOHN W. N. MURPHY  
Director  
Bureau of Corrections

WNU/  
Enc.

## STATE OF MINE

## BUREAU OF CORRECTIONS

Policy Statement  
November 24, 1971

Superintendents and Administrative Staffs

Miss Ward N. Murphy, Director of Corrections

SUBJECT: POLICY GOVERNING ACCESS OF NEWS MEDIA

In the interest of the public, the various institutions, and the staff and inmates of these institutions, it is imperative that open lines of communication be made available between the accredited news media and those involved in the entire operational process. To assist in meeting this objective, the following is established as a policy of the Bureau of Corrections, effective January 1, 1972:

1. Any representative of the news media shall submit a written request to the Superintendent or Warden of the institution concerned, identifying the news organization represented; the subject, event, or individual to be covered. Any news coverage or interviews shall take place during the regular visiting hours at the institution or by appointment at any other time.
2. Requests for access to individual inmates will be granted only when the inmate concerned has given his written consent.
3. Any equipment, including but not limited to cameras or recording device, shall be subject to inspection at the time of entering the institution.
4. In all cases, coverage or access shall be promptly arranged, following the above procedure, unless the Superintendent or Warden recommends that coverage or access be denied.
5. Denial of news coverage or access may be made only by the Director, Bureau of Corrections. In those situations where the Superintendent or Warden considers that the news coverage or access will compromise the security of the institution or the safety of its inmates or its staff, he shall recommend to the Director, Bureau of Corrections that news coverage or access be denied. A request for news coverage or access will not be denied for the sole reason that the inmate sought to be interviewed is an unrepentant offender. Recommendations for denial shall be documented, annexed to the letter of request, and forwarded to the Director, Bureau of Corrections for determination.

/s/ Ward N. Murphy

WARD N. MURPHY  
Director, Bureau of Corrections

STATE OF OHIO



## DEPARTMENT OF REHABILITATION AND CORRECTION

1744 MORRIS ROAD, COLUMBUS, OHIO 43267

(614) 466-6170

JOSEPH A. GILFILLAN - DIRECTOR  
 DIRECTOR J. GILFILLAN - DIRECTOR

October 1, 1978

Mr. Joseph A. Gilfillan, Jr.  
 William, Connolly and Gilfillan  
 1000 Hill Building  
 Washington, D. C. 20006

Dear Mr. Gilfillan:

I am in receipt of your letter of September 27, 1978 regarding the policy of this Department with respect to interviews by the press of inmates in correctional institutions.

Let me begin by saying that it is the policy of the Department to permit such interviews. Attached hereto is a copy of our Administrative Regulations pertinent to this subject, which sets out in detail when interviews are permitted and when they are not. You will note that on the one hand the regulation is quite liberal, while at the same time it does provide for denying requests for interviews under certain circumstances. These circumstances are listed directly in security and I am sure that you can appreciate this. In short then, we believe that the correctional institutions should be open to the public and the press, except under certain circumstances. We have found this practice to be beneficial to all, as it serves an important educational function in bringing to the attention of the public the needs of the criminal justice system. There are, of course, certain problems that arise with such a policy, but these problems are far outweighed by the benefits they produce.

At this point in time, it would be mere speculation to project how many interviews have been conducted (the new policy has been in effect since August 7, 1978). I do not think the burden has been heavy on our institution administration, as few complaints have been registered.

As to the questions you raised in your letter concerned itself with any (if any) that have arisen in connection with such interviews. The problems we have faced in the inaccurate and often non-objective reporting that takes place. All too often the facts are not thoroughly investigated with the result being a one-sided story, giving false images of the system. Recently an inmate began writing to a major newspaper in one of

Mr. Joseph A. Califano, Jr.  
Washington, D. C. 20008

October 4, 1972

our office regarding certain alleged incidents that allegedly occurred at the institution he was incarcerated in. The result was front-page stories depicting a cruel and sadistic environment. The inmates at this institution became very concerned about the articles and made their concern known to the administration. What the end-result produced was great detriment to the rehabilitative programs at the institution and embarrassment to the inmate body.

I am also enclosing a copy of the Ohio Citizens' Task Force on Corrections Final Report, which will give you an idea of public awareness regarding the correctional system. Many of the recommendations contained in that report are now being implemented by this Department.

I hope I have been somewhat helpful to you in your preparation for trial and wish you the best. If I can be of further assistance to you on this or other matters, please do not hesitate to contact me.

Very truly yours,

*Rennett J. Cooper*  
Rennett J. Cooper  
Director

RJC:Wm  
enclosures

STATE OF OHIO

## DEPARTMENT OF REHABILITATION &amp; CORRECTION

Page 1 of 2

ADMINISTRATIVE REGULATION NO.  
SUBJECT: NEWS MEDIA VISITS  
AND INTERVIEWS

2. It is the policy of the Department of Corrections to permit visits by representatives of the news media to correctional institutions, when approved by the Managing Officer of the particular institution or his designee.
3. Requests by representatives of the news media for permission to visit an institution shall be granted unless the Managing Officer or his designee determines that such a visit would constitute a clear and present danger to institutional security, would unnecessarily interfere with the orderly administration of the institution or would endanger the safety of the reporter or reporters.
3. The Managing Officer or his designee may place reasonable restrictions on the number of reporters allowed in the institution at any one time and on the duration of their visits.
4. Arrangements for the taking of pictures must be made in advance with the Managing Officer or his designee. Pictures of specific inmates may be taken only after securing clearance from the Managing Officer or his designee and only after the inmate to be photographed has expressed his approval by signing the Inmate Consent Form.
5. Personal Interviews of Specific Inmates
  - A. Personal interviews, either filmed or unfilmed, of inmates by representatives of the news media must be approved in advance by the Managing Officer or his designee, the inmate to be interviewed, and the inmate's attorney-of-record if the inmate has any pending legal action. The inmate's consent (and his attorney's consent, if required) must be evidenced by his signing of the Inmate Consent Form.
  - B. Subject to prior approval of the Managing Officer or his designee, a member of the news media may interview more than one inmate at the same time, and, also subject to prior approval by the Managing Officer or his designee must base his decision to allow such interviews on the criteria listed in subsection C below.
  - C. The Managing Officer or his designee shall, if space is available for the interview, grant permission for an interview unless he determines either:
    1. the effects such an interview would have on the inmate and his personal mental attitudes;
    2. the effects it would have on other inmates;

Revised 8/72

## STATE OF OHIO

## DEPARTMENT OF REHABILITATION &amp; CORRECTION

Page 2 of 2



DEPARTMENT OF REHABILITATION & CORRECTION  
JOHN J. COOPER - DIRECTOR

3. the effect of such an interview with respect to any pending legal action or review by the Adult Parole Authority;
  4. that the interview would present a clear and present danger to the security of the institution, or security of the reporters; and
  5. that the interview would seriously disrupt the orderly administration of the institution due to the number of correctional officers needed during the interview to provide sufficient security for the security of the institution or the reporters.
- D. The Managing Officer or his designee may place reasonable restrictions on the frequency, length and starting time of personal interviews. The institution may visually monitor such interviews to assure the reporters' safety, but in no case may such interviews be verbally monitored without the approval of all parties involved in the interview.
- E. Any inmate or newsmen aggrieved by an adverse decision of the Managing Officer or his designee concerning personal interviews may appeal the decision to the Director or his designee. The Director's decision and his reasons therefor shall be promptly communicated to the Managing Officer and all appealing parties.
- F. If an institution is placed under a state of emergency, representatives of the news media will be allowed access only to those areas that are designated safe by the Managing Officer or his designee. During the existence of a state of emergency, the Departmental Communications Officer or his designee shall periodically, and in no case less than once daily, inform the news media of the situation within the institution.



BUREAU OF PRISONS

WASHINGTON, D. C. 20037

# Policy Statement

SUBJECT: PRISONER'S MAIL BOX

U. S. GOVERNMENT PRINTING OFFICE

7300.2A

8-7-72

1. PURPOSE. This statement of policy is to update and revise the current procedures pertaining to the operation of the Prisoner's Mail Box.

DIRECTIVE. This Policy Statement supersedes Policy Statement 7300.2A, dated December 28, 1967.

POLICY. It is the policy of the Bureau of Prisons to provide all inmates in Bureau institutions the opportunity to write government officials who are not immediately responsible for their care, custody, and correction. All letters mailed through the Prisoner's Mail Box procedures will be neither opened nor inspected. All inmates may utilize this process to write to officials specified below to discuss any problem or situation which they feel cannot be solved with the assistance of institutional personnel or by the use of normal mail channels.

Inmates may address letters through the Prisoner's Mail Box to: the President and the Vice-president; the Attorney General; Director, Bureau of Prisons; Office of General Counsel and Review, Bureau of Prisons; members of the United States Board of Parole; the Pardon Attorney; the Surgeon General, U.S. Public Health Service; the Secretary of the Army, Navy and Air Force; United States Courts; members of the U.S. Senate and House of Representatives; and representatives, specified by name or title, of the news media (as defined by Policy Statement 1220.1A).

State prisoners that are housed in Bureau institutions will be permitted to utilize the Prisoner's Mail Box to correspond with state officials concerning their problems. Letters to Governors, Attorneys General, Director of Departments of Corrections and sentencing Judges will be forwarded in accordance with standard procedure outlined in this policy statement.

## 4. OPERATIONAL PROCEDURES

a. (1) Description. The Prisoner's Mail Box will be placed in a central location or locations readily accessible to the inmate population. Each mail box will be plainly marked and a statement of purpose will be posted indicating a list of persons to whom mail may be sent. The statement will also indicate that matters which should be taken up with institution officials will normally be returned to the institution for disposition. The inmates' original letters will be returned with their responses from General Office personnel.

(2) The notice placed on each mail box will also include the following statement:

Page 2  
1400, ZH  
M-7-17

"The contents of all correspondence placed in this box are the responsibility of the individual writer. Any material which violates postal laws or regulations, i.e., is obscene or lewd or contains threat of bodily harm, involves extortion or libel, includes contraband, or is intended to facilitate escape from legal custody may result in prosecution in a Federal Court."

- (3) The above statement will be translated into Spanish to advise the large number of Spanish speaking inmates in our care.

- b. Collection: A designated institutional staff member will collect the contents of each Prisoner's Mail Box on a daily basis, Monday through Friday. All mail addressed to the Bureau will be forwarded each day in an envelope plainly marked, "Prisoner's Mail Box."
- c. Identification of Mail: Inmates will not be required to place their name or any identifying mark on the envelopes but will be requested to address all mail as legibly as possible.
- d. Letters to Central Office: All mail addressed to members of the Central Office staff of the Bureau of Prisons will be forwarded with other Prisoner's Mail Box letters, but only the Director's name is to be placed on the notice posted with the mail box.
- e. Letters to the U.S. Courts: All mail addressed to the U.S. Courts shall be separated from other Prisoner's Mail Box letters and forwarded directly to the addressee, but with the envelope stamped as directed in paragraph "h" of this policy statement.

Mail addressed to the U.S. Attorneys, U.S. Probation Officers and Clerks of the Court will be forwarded to the addressee, but the notices posted above the mail box will be limited to U.S. Courts.

Legal documents such as petitions for writs of habeas corpus, motions to vacate sentences, requests for trial records, etc., will be processed as Special Purpose correspondence as provided for in Policy Statement 7300.1A dated March 16, 1972.

- f. Letters to Members of Congress: All mail addressed to members of Congress will be separated from other Prisoner's Mail Box letters and be forwarded directly to the addressee but with the envelope stamped as directed in paragraph "h" of this policy statement. Letters to members of Congress will be sent to their Washington address and each institution will insure that a current Congressional Directory is available for ready reference by all inmates. Letters addressed to persons that you are unable to identify as members of Congress or letters which pose other unusual problems, will be forwarded to the Bureau for disposition. All inmates will be instructed that multiple letters to several members of Congress are likely to be less effective than will one letter to the Congressman of his choice. Follow-up letters are normally unnecessary and should not be written in less than one month. Letters to members of Congress may be sent as "Special Purpose" mail if the inmate so desires.

k. Registered Letters. Inmates will be allowed to send letters through Prisoner's Mail Box procedures as registered, certified, or special delivery if they so desire and at their own expense. In order to do so they must identify themselves by name and register number as the proper procedure for handling mail of this type can be followed. Of course the letters may be mailed only to individuals authorized on the notice on the Prisoner's Mail Box. The letter will still remain sealed and will be processed in accordance with each institution's procedures for the handling of registered mail. The handling of Commissary Form #24s will be consistent with the procedures outlined in Policy Statement 13263.

l. Transmittal Stamp. Each institution will have a stamp made that includes the following statement: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another address, please return the enclosure to the above address."

This revised procedure will eliminate the stapling of the old transmittal slip to the inmate's envelope and eliminate the cost and time factor of readdressing another envelope. This message is to be stamped directly on the back side of the inmate's original envelope.

It is imperative that this message be stamped in a clear and legible manner on each envelope. An example of this stamp is shown on attachment 1.

m. ACTION REQUIRED. The procedures outlined above become effective immediately. Institution policy statements relating to Prisoner's Mail Box should be amended in accordance with these procedures and a copy sent to the Assistant Director, Institutional Services.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.

629

Attachment 1  
7300.211  
N-7-

EXAMPLE OF TRANSMITTAL STAMP ON BACK  
"SIDE" OF ENVELOPE

Box 500  
STELLACOOM, WASHINGTON 98388

DATE \_\_\_\_\_

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address.

BUREAU OF PRISONS

WASHINGTON, D. C. 20537

## Policy Statement

7300.4A

SUBJECT: VISITING REGULATIONS

4-24-72

1. POLICY. In order to achieve the main objective of the Bureau of Prisons-- correction of the offender--it is essential that the individual offender develop and maintain healthy family and community relationships. Due to the difficulty in fostering positive relationships in a penal or correctional setting, visits by family and community groups are to be stressed as an important factor in maintaining the morale of the individual offender and motivating him toward positive aspirations. Visits are to be utilized as opportunities for developing closer relationships between the staff, family members, and community groups for the purpose of more effective program planning. Visits should be conducted and supervised in a manner which will contribute to good public relations, to a better understanding of the institution's program, and to a better understanding of the overall mission of the Bureau.
2. PURPOSE.
  - a. To provide updated information pertaining to visiting regulations.
  - b. To standardize the format for Policy Statement issuances.
3. DIRECTIVES AFFECTED. Policy Statement 7300.4 Manual Bulletin No. 276), Visiting Regulations dated 7-1-49, is rescinded.
4. VISITING REGULATIONS. Because of the practical considerations and because of the nature of correctional institutions, certain limitations must be recognized and controls established in developing and administering visiting regulations. The size, mission, locations, and other variables will indicate the limitations which must be recognized and the controls necessary in each facility. Each institution shall develop the procedures and regulations required to administer the Bureau's visiting policy. The practical considerations which demand controls upon visits include the limitations of visiting space, the time and administrative expense incident to arranging and supervising visits, and the need for maintaining other institutional activities without unnecessary or extended interference. The extent of these limitations will vary with each institution, and they should be recognized as the only reasons upon which restrictions on visiting should be based.
5. GUIDELINES.
  - a. Visiting Facilities  
The visiting room should be arranged to provide adequate supervision, adapted to the degree of security required by the type of population. It should be as comfortable and pleasant as possible, and informally arranged. Appropriate furnishings (e.g., small tables and chairs, settees, and other less formal furniture arrangements) are preferable to the

"unconventional" prison visiting table. This is particularly true in institutions for juveniles, reformatories, correctional institutions, and camps, but may apply to penitentiaries, except where offenders who are in maximum security or who are supervision risks are involved. The camps, reformatories, juvenile and correctional institution visits may be held beyond the security perimeter when the weather permits, but always under supervision of an officer. Penitentiaries may establish outdoor visiting when weather and facilities permit, but always inside the security perimeter. If space is available, a portion of the visiting room should be equipped and set up to provide a diversion for the children of visitors.

b. The Visiting Room Officer

Visits must be supervised to prevent the passage of contraband and to insure the security and welfare of the institution. Visits have an inevitable and extensive public relations aspect. The impressions gained by the visitor, whether he be a member of the offender's family or a government official, are of the utmost importance. For these reasons, selections for this correctional assignment should not be left to chance or shifted frequently. The officer's personal appearance, his manner of speech, his ability to be tactfully firm, his alertness, his grasp of regulations, and his judgement in sensing situations requiring referral to other institutional departments, will determine the effectiveness of the visit.

c. Visiting Times

Each institution will establish its own visiting schedules. Although visiting on Saturdays, Sundays, and holidays may be emphasized, the restriction of visiting to these days may be a hardship upon some families and arrangements for suitable hours should be made if at all possible. Evening visiting hours can and should be established where staff resources permit.

d. Frequency of Visits

Limitations on the length or frequency of visits should be imposed only to avoid chronic overcrowding. A reasonable number of visits or number of hours per month shall be established consistent with resources available. Exceptions should be made to any such rules where indicated by special circumstances, such as distance the visitor must travel, frequency of the inmate's visits, or health problems of the offender.

e. Regular Visitors

The casework staff will be responsible for compiling a regular visiting list for each offender and the following should be placed on the approved list after suitable investigation:

- (1) Members of the Immediate Family  
This includes mother, father, step-parents, foster parents, brothers and sisters, wife or husband and children. Under ordinary circumstances, there would be no question about placing such persons on the regular visiting list of the offender.
- (2) Other Relatives  
These include grandparents, aunts, uncles, in-laws, and cousins, who may be placed on the approved list if the inmate wishes to have such visits regularly.
- (3) Friends and Associates  
The visiting privilege may be extended to friends and other non-relatives if it can be ascertained that the association or friendship is a genuinely constructive one and that the offender would profit from such continued contact.
- (4) Persons with Criminal Records  
The existence of a criminal record of itself should not constitute a barrier to proposed visits. Consideration should be given to the nature and extent of the criminal record and history of recent criminal activity as weighed against the value of the relationship. Each such case, however, should have the specific approval of the Chief Executive Officer or his designated representative.
- (5) Children Under Sixteen  
It is not considered desirable that children under the age of 16 be permitted to visit unless accompanied by a responsible adult. Exceptions in unusual circumstances may be made by special approval of the Chief Executive Officer.
- (6) Number of Visitors  
Some limitations may be necessary where the inmate has a large number of regular, approved visitors living in the vicinity of the institution. Where facilities permit, family groups should be allowed to visit. The Chief Executive Officer may establish a regulation as to the maximum number of persons who may visit an inmate at one time, but these regulations should be interpreted flexibly, their purpose being simply to prevent overcrowding in the visiting room or unusual difficulty in supervising a visit.
- (7) Special Visits  
Special visits may be authorized by the Chief Executive Officer or his designated representative. These persons include clergymen, former or prospective employers, sponsors, and parole advisers. Visits in this category serve such purposes as assistance in release planning, counseling, and discussion of acute family problems.
- (8) Surrogate Visitation  
It is the policy of the Bureau of Prisons that no inmate shall be

permitted to engage actively in a business or profession while serving a sentence. An inmate who has engaged in a business or profession prior to commitment will be expected to delegate authority for the operation of such business or profession to a qualified person. This does not mean that the offender may not have a visit which may be necessary to protect his resources or financial interests. Even though the offender has turned over the operation of his business or profession to another person or persons, there may be an occasion where a decision must be made which will substantially affect the assets or prospects of the business. Insofar as possible, business matters which require the offender's attention should be resolved by special purpose correspondence.

Before visits of this kind are permitted, it should be ascertained that the business is of a legitimate nature. The time allowed for the visit shall be determined by the Chief Executive Officer or his authorized representative. Special arrangements may be necessary in the instances where those listed as special offenders are involved. In these instances, and when there are excessive requests for business visits, the matter should be brought to the attention of the Director, with a full statement of the details.

Whenever it has been determined that an offender is a citizen of a foreign country, the consular representative of that country shall be permitted to visit such offenders on matters of legitimate business. This privilege shall not be withheld even though the inmate may be undergoing punishment status.

(9) Attorney Visits (See F.S. 3001.23--Attorney Visits).

1. Visits to Offenders Not in Regular Population Status

(1) Admission Status

Visits during the admission--orientation period may generally be limited to the immediate family. However, some flexibility and good judgment should be exercised in approving or disapproving visitors during this time period.

(2) Hospital Patients

When visitors come to see an offender who is hospitalized, the Chief Medical Officer, in consultation with the Chief Correctional Supervisor will determine whether a visit should take place and if so whether it should be held in the hospital. Visits that are allowed to take place in the hospital will be supervised, and the Chief Correctional Supervisor will provide escort for the visitors. When the Chief Medical Officer recommends against the visit because the offender is suffering from an infectious disease, is in a psychotic or emotional episode which makes a visit inadvisable, or is otherwise not in a condition to see visitors, the situation



should be very carefully interpreted to the visitor by the Chief Executive Officer or his authorized representative.

(9) Disciplinary Status

Visiting privileges should not be taken away from an inmate because of violation of institution regulations, other than those specifically related or concerned with the visiting regulations. However, inmates in segregation or isolation may be denied a visit, if in the opinion of the Chief Executive Officer or his authorized representative, it would jeopardize the security of the institution.

M. Visits from Community Groups and Individuals

Offenders who have no friends or relatives who can visit them deserve special attention. Others who may particularly benefit are those offenders whose relatives or friends do not have a constructive influence on them and offenders who feel they are outsiders and have little prospect for satisfactory community adjustment. Still others are persons who present special problems such as intense feelings on social relationships. Visits from members of the community should assist the inmate in developing and maintaining a more normal social attitude and outlook. It should be viewed as an influence which can assist in breaking down the traditional isolation under which the offender lives.

Persons which should be drawn upon are civic and religious organizations and other persons whose interest and qualifications for this kind of service may be known to various staff members. Generally, visits for inmates already involved in community based programs will be held in the institutional visiting room. However, special visits in the community may be specifically approved, but only in accordance with the Policy Statement on Inmate Parole. (See P.S. 7300.18A)

N. Programs

The Chief Executive Officer of the institution is responsible for the establishment and enforcement of visiting regulations and their adaptation to the institution in accordance with the policies issued by the Central Office. He can, at his discretion, delegate to the Chief Classification and Parole such authority as he deems advisable. The Chief Classification and Parole shall be responsible for furnishing the Chief Executive Officer and other staff current information concerning all visitors and shall assist the Chief Executive Officer in the general supervision of this phase of institutional administration. However, the Chief Correctional Supervisor is responsible for the operation of the visiting room and the selection and training of the Visiting Room Officers.

(1) Preparation of the List of Visitors

Each offender will submit to the Classification and Parole Office a list of persons with whom he wishes to visit. This action will normally occur during the Admission Orientation period. After appropriate investigation of the proposed list of visitors, the Parole Office will prepare in duplicate a list of all visitors approved for regular visiting. Distribution will be made to the inmate file, the individual inmate concerned, the Visiting Room Office, and other offices responsible for identification of persons as approved visitors. This will ordinarily be done within the first few days after the inmate's commitment, hopefully, within 48 hours.

Visitors should receive a continuous notification of their approval as visitors including a copy of the visiting regulations. These regulations should provide specific instructions for reaching the institution and should make reference to Section 1791, Title 18, U. S. Code, which provides a penalty of not more than ten years for any person who introduces or attempts to introduce into or upon the grounds of any Federal prison or correctional institution or takes or attempts to take or send therefrom anything whatsoever without the knowledge and consent of the Chief Executive Officer of the institution. Additions to or deletions from the list of visitors will be approved by the Classification and Parole Department and forwarded routinely.

(2) Identification of Visitors

The usual means of identification are automobile driver's license, Social Security card, membership cards of various kind bearing a signature of the visitor or other personal papers. These need not be the sole basis of identification. Tactful questioning on the basis of available information may help weed up doubtful cases. Inability to establish identity should be reported to the Chief Executive Officer or his authorized representative.

(3) Records of Visitors

The Visiting Room Office shall maintain a record of each visit, regular, special, approved or denied. Each visitor shall be required to sign the register on leaving the institution.

(4) Supervision of Visits

In the supervision of visiting, it is the responsibility of the Visiting Room Office to make certain that all visits are conducted in a quiet, orderly, and dignified manner.

The staff should be aware of any action passed between the offender and his visitor. If there is a substantial basis to conclude that material now being passed which constitutes contraband or any other violation of the law or regulations, the Visiting Room

Officer may examine the paper. The Chief, Classification and Parole or the duty officer should be consulted in questionable cases.

In no instance shall the Visiting Room Officer accept articles or gifts of any kind for an offender, except packages which have had prior approval by the Chief Executive Officer or his designated representative. Money may be left for deposit in the inmate's commissary account, and each institution shall devise its own method of handling money in compliance with the Commissary Manual.

Handshaking, embracing, and kissing by immediate members of the family may be permitted within the bounds of good taste at the beginning and end of the visit. The reason for limiting physical contact is to minimize the opportunity to introduce contraband into the institutions.

(9) Penalty for Circumventing Regulations

Any effort to circumvent or evade the visiting regulations established by any Bureau of Prisons facility will not only result in the denial of future visits, possibly over an extended period of time, but may require that other disciplinary action and possible court proceedings be initiated against the visitor.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.

BUREAU OF PRISONS

WASHINGTON, D. C. 20037

# Policy Statement

FD001,7A

**SUBJECT:** MINIMUM YET IDEAL, RESEARCH MATERIALS AND  
IDEAL, COURTESY, AND PREPARATION OF LEGAL  
RESEARCH

9-8-71

1. **POLICY.** It is the intent of the Bureau of Prisons to afford inmates reasonable access to legal materials, legal counsel and a reasonable opportunity to prepare their legal documents. The inmate program will continue without undue disruption by legal activities except in those instances where inmates are confronted with imminent deadlines established by the court in which the inmate lawsuits are pending.

2. **PURPOSE.** The purpose of this Policy Statement is to set forth the policies to be applied throughout the system. In certain instances the Policy Statement is purposely general to enable individual institutions, within these guidelines, to promulgate local rules and regulations which are most appropriate to their needs.

All institutions are to submit copies of their local policy statements which implement this Policy Statement to the Office of General Counsel and Review within 60 days from this date.

3. **DIRECTIVE AFFECTED.** Policy Statement FD001,7A dated 8-29-71 is hereby rescinded. Form BY-A04-6 is discontinued.

4. **PROVISION FOR LEGAL RESEARCH MATERIALS.**

a. In the fall of 1971, the United States Supreme Court found the California Department of Corrections inmate library regulations, which were similar to the Bureau of Prisons, to be deficient in that they deprived the indigent inmate of an opportunity to consult basic legal references in preparation of legal actions. Therefore, we are expanding the content of libraries, and revising the methods of acquisition of the legal materials as well as the receipt and handling of these materials within the institutions.

b. In order to provide uniformity and meaningful research materials consistent with the needs of each institution we will acquire the following for each institution:

1) United States Code Annotated

a. Title 18 - all volumes (Criminal Code and Criminal Procedure)

b. Title 28 - Sections 2251 to and (National Supreme and National to Vacate Sentences)

c. Title 28 - Volumes containing Supreme Court Rules, Federal Rules of Appellate Procedure, and U.S. Court of Appeals Rules

- d. Federal Rules of Civil Procedure (in pamphlet form)
- e. Title 21 - (Food and Drug)
- f. Title 26 - Sections 4001 to end (Narcotic Offenses)
- g. Title 42 - Sections 1975 - 2010
- h. U.S. Constitution, Amendment 1 to end
- 2) Black's Law Dictionary
- 3) United States Law Week (Bureau of National Affairs)
- 4) Criminal Law Reporter (Bureau of National Affairs)
- 5) Hall and Kaminar, Modern Criminal Procedure
- 6) Bureau of Prisons Policy Statements of interest to inmates to be maintained in notebook form.
- a. In each adult institution we intend to acquire in addition to the above the current issues of:
  - 1) United States Supreme Court Reports
  - 2) Federal Reporter Second
  - 3) Federal Supplement
- d. The Central Office Librarian will acquire and distribute the basic law library materials to each institution. Previously acquired materials should be retained, and inmate-donated books and materials may be added to the collection. In case there is a question as to the acceptance of a particular volume, the Office of General Counsel should be consulted.
- e. Maintenance of the materials once received will be the responsibility of the institution. Each institution should appoint one person to be designated "law librarian." This person should, if at all possible, have some familiarity with library, business or clerical type work. Most materials once acquired will need little maintenance, however, the Criminal Law Reporter and the United States Law Week are financial publications with weekly supplements which must be correctly filed if these services are going to be of use as intended.

Page 3  
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b-h-52

1. It is preferable that each institution set aside a sufficiently large room where the books may be kept and where the inmates may work at tables without the need for carrying the materials. In planning for the expanded law library, especially of the adult institutions, it must be kept in mind that as each reporter is obtained it becomes a permanent part of the collection. Therefore, in selecting the site for the law library, the expanding nature of the collection should be taken into consideration.
2. It is contemplated that in each adult institution, only one set of the case reporters will be obtained for the use of all inmates. With respect to the basic resources materials, however, additional sets will be furnished when it can be shown that inmate assignment prohibits frequent access to the main law library.
3. Incumbent on the purchase of these additional materials is that they be available for inmate use as needed. When possible, evening and weekend hours should be provided. Institution copying equipment may be made available to reproduce materials needed for research outside the library area. When this is done, procedures should be established for an inmate to request a reasonable amount of reproduced material. It is suggested that the request form contain a space for the inmate to indicate why material is needed outside the time made available in the library. By providing ample hours for library usage and by making the copying equipment available, when possible, mutilation and theft of legal materials can be minimized. Legal materials are expensive to maintain, so supervision of the library area should be provided as necessary to protect the materials. It will be the institution's responsibility to maintain the collection intact and notify the librarian in the Central Office of permanently missing or damaged volumes so that they can be replaced. All inmates using the library should be advised of the rules which govern its use, and of the injury to all which can result from misuse of the facility provided. Unauthorized materials from the library found in an inmate's possession should of course be considered as theft or destruction of government property.
4. Each institution should separately submit to the Office of General Counsel a copy of its plan to implement the Policy Statement within sixty (60) days from this date. This should describe the area set aside for the legal materials, the hours the materials will be available, the person designated to supervise the law library, and the copying arrangements if any to be provided. If, to make the materials freely accessible to all inmates, more than one set of basic reference materials is necessary, please indicate the number needed. When doing so, please explain where it is intended each set will be used.

5. PURCHASE AND DISPOSITION OF LAW BOOKS AND OTHER LEGAL MATERIALS BY INMATES.

- a. If an inmate has the financial means to purchase law books, he shall be allowed to do so unless there is a compelling reason to the contrary. It is inappropriate for an administrator to make the determination that the specific material sought by an inmate is not relevant to his case. If there appears to be clear and compelling reasons to disallow a purchase, the Office of the General Counsel should be advised before a final determination of the matter is made.
- b. Law books and other materials are to be purchased only from the primary sources of supply, i.e., the publisher of law books; the clerk of court and/or a judge of the court in the case of court documents.
- c. Since the institutions will be maintaining the basic reference books there should be no need to accumulate all books purchased by inmates. An inmate may donate a particular book to the library when he is finished with it, if he wishes to do so and the institution agrees to accept the offer. The physical facilities of the institution and the nature of the book are appropriate factors to be considered, i.e., whether additional books can be readily accommodated and whether the book is broad in applicability. In the event a book is not to be acquired, it should be sent home or destroyed, whichever the inmate prefers.
- d. The present accumulation of obsolete and irrelevant materials may be disposed of but case reports (Federal Supplements; Federal Reporter; United States Reports) already in the library should be retained. Further accession of these reporters should be made only by mutual agreement as indicated above.

6. PREPARATION OF LEGAL MATERIALS BY INMATES.

- a. Inmates should be allowed to have a reasonable amount of time to prepare their documents. What is reasonable depends upon the individual circumstances. Inmates who are required to meet deadlines in connection with pending litigation in general should be given more latitude than those who are preparing to institute suit and are not required to file within a given period. Documents presented for submission to the courts should always be forwarded, if they are threatening or indelicate, a special cover letter should accompany the document explaining Bureau policy and relevant background factors and data.

Page 3  
2001.25  
5-8-77

- b. In 1964, the United States Supreme Court held that, unless there was a reasonable alternative, one inmate could not be prohibited from assisting another in the preparation of his legal matters. Therefore, unless the institution has an active, on-going legal assistance program, one inmate should be allowed to assist another in the research for and the preparation of legal documents.
- c. Inmate in apprenticeship status should, as far as possible, be given the opportunity to work on their legal matters and have access to legal references, materials equal to those persons in general population.
- d. Preparation of legal documents in living quarters during "off duty" hours may be authorized. Factors which might preclude such arrangements could include the individuals involved or the peculiar housing accommodations.

#### 7. USE OF TYPEWRITERS

- a. The advantage of submitting typewritten documents is well established. Thus unless it is demonstrated that the use of typewriters is not feasible in a particular institution, their use should be allowed either through inmate clerks to whom handwritten documents are submitted by the individual inmates or typed individually, or submitted in viable stenographs, whichever procedure is in accordance with institution policy.
- b. If there is to be a delay in having documents typed, the inmates should be so advised, and he may transmit handwritten papers to the court.

#### 8. RETENTION OF ATTORNEYS

- a. Inmates should be allowed to contact attorneys for the purpose of representing them.
- b. While it is permissible to advise an attorney of the funds which the inmate has available, and it is many times desirable to counsel with the inmate, if the inmate has attained his majority and is mentally competent to handle his own affairs, we are not to interfere with the financial arrangement between attorney and client. Neither are we to act as a guarantor or collector of the fees. The payment of retained attorney's fees is a matter between attorney and client. Administrative Form 8 is hereby discontinued.



9. ATTORNEY VISITS.

- a. Visits by retained and appointed attorneys and by attorneys requested by an inmate or his family in contemplation of prospective legal representation shall be permitted.
- b. Specific regulations pertaining to the frequency of visits shall not be established due to the fact that the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.
- c. The attorney should normally make an appointment with the Chief Executive Officer or his authorized representative prior to each visit but every effort should be made to accommodate an attorney's visit where prior notification was not practicable.
- d. The attorney shall identify himself as the attorney for whom the visit has been approved by showing the letter from the inmate or his family requesting the visit or by showing such other information that would identify him as an attorney of the inmate he has requested to see.
- e. The Bureau of Prisons reserves the right to refuse admission to one of its facilities to those who fail to comply with regulations or who seek to exploit offenders. If there is any question about the identity of the attorney or his qualification as an attorney in good standing, the matter should be referred to the Office of General Counsel and Review.
- f. Visits between the attorney and his client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of his visit when he agrees in writing in advance of the interview that the only purpose of the recording is to facilitate the attorney-client relationship. Attachment A is a sample of a statement which might be used to assure compliance with this section.

10. CORRESPONDENCE BETWEEN ATTORNEY AND CLIENT.

- a. Correspondence addressed to an attorney shall be mailed from the institution unopened and uninspected. A statement to the attorney, from the Chief Executive Officer, cautioning against use of this mail to transmit contraband or to forward any matter on to unauthorized correspondents, should be attached. Inmate should be

advised that at their option and with the concurrence of their attorney and that, if this election is made, it could cause some delay in the delivery of incoming correspondence. The attorney should also be advised that all addressed to the inmate will be opened and inspected in the presence of the inmate, if the attorney indicates on the incoming envelope that this is his preference. Attachment B is a sample of that statement:

- b. Correspondence addressed to an inmate by an attorney or law office may be opened, for the purposes of inspection for contraband.
- c. Incoming correspondence shall be stamped immediately on arrival, on the envelope and letter, to show time of receipt. All matters in this correspondence which relate to legal advice or concern pending or prospective litigation are to be kept in strict confidence by the inspecting official. Attorney-inmate mail shall not be copied by the institution. Rejected material shall be returned to the sender, with an indication of the reason for rejection. Material consisting of or proposing violation of the law need not be returned to the sender, but should be referred to the appropriate investigating agency.
- d. When, in emergency circumstances, a telephone call between the attorney and inmate is authorized, the institution staff shall assure that the person is an attorney, and shall then not monitor the conversation.

  
 NORMAN A. CARLSON  
 Director, Bureau of Prisons

Attachment CH-1  
1001.15  
8-19-73

ATTACHMENT A

I, \_\_\_\_\_, a licensed attorney in the State of \_\_\_\_\_, with offices at \_\_\_\_\_, \_\_\_\_\_, visiting \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_, agree that my visit with this inmate is for the purpose of facilitating the attorney-client relation and for no other purpose. I agree that any tape-recording or other recording made by me will be used only to facilitate this relationship.

ATTACHMENT B

This institution retains the right to open mail from attorneys to inspect for physical enclosures constituting contraband. This mail will not be read or copied, since it is assumed to be within the purview of the attorney-client relationship. It should not be used for other purposes. The use of this mail for other purposes may result in preclusion of the correspondent from the provisions of this policy statement. The inspection will be done in the presence of the inmate, if the attorney so indicates on the outside of the incoming envelope. This could be substantiated as follows: "This envelope should be opened only in the presence of the addressee."

MAILED

BUREAU OF PRISONS

WASHINGTON, D. C. 20537

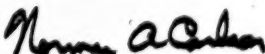
## Operations Memorandum

1001,9

SUBJECT: REVISED PAGES 6, 7, AND ATTACHMENT TO POLICY  
STATEMENT 1001,28, SUBJECT: ACCESS TO LEGAL  
REFERENCE MATERIALS AND LEGAL COUNSEL AND  
PREPARATION OF LEGAL DOCUMENTS

8-29-72

1. PURPOSE. To transmit revised pages to Policy Statement 1001,28 relative to legal reference materials.
2. ACTION. Replace pages indicated on the attached Page Control Chart.
3. THIS OPERATIONS MEMORANDUM IS CANCELLED AUGUST 31, 1973.



HERMAN A. CARLSON  
Director, Bureau of Prisons

- \* b. In 1969, the United States Supreme Court held that unless there was a reasonable alternative, one inmate could not be prohibited from assisting another in the preparation of his legal matters. Therefore, unless the institution has an active, on-going legal assistance program, one inmate should be allowed to assist another in the research for and the preparation of legal documents.
- \* c. Inmates in segregation status should, as far as possible, be given the opportunity to work on their legal matters and have access to legal reference materials equal to those persons in general population.
- d. Preparation of legal documents in living quarters during "off duty" hours may be authorized. Factors which might preclude such arrangements could include the individuals involved or the peculiar housing accommodations.

#### USE OF TYPEWRITERS.

- a. The advantage of submitting typewritten documents is well established. Thus unless it is demonstrated that the use of typewriters is not feasible in a particular institution, their use should be allowed either through inmate clerks to whom handwritten documents are submitted by the individual inmates or typed individually, or submitted to public stenographers, whichever procedure is in accordance with institution policy.
- b. If there is to be a delay in having documents typed, the inmates should be so advised, and he may transmit handwritten papers to the court.

#### RETENTION OF ATTORNEYS.

- a. Inmates should be allowed to contact attorneys for the purpose of representing them.
- b. While it is permissible to advise an attorney of the funds which the inmate has available, and it is many times desirable to counsel with the inmate, if the inmate has attained his majority and is mentally competent to handle his own affairs, we are not to interfere with the financial arrangement between attorney and client. Neither are we to act as a guarantor or collector of the fees. The payment of retained attorney's fees is a matter between attorney and client. Administrative Form 6 is hereby discontinued.

9. ATTORNEY VISITS.

- a. Visits by retained and appointed attorneys and by attorneys requested by an inmate or his family in contemplation of prospective legal representation shall be permitted.
- b. Specific regulations pertaining to the frequency of visits shall not be established due to the fact that the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.
- c. The attorney should normally make an appointment with the Chief Executive Officer or his authorized representative prior to each visit but every effort should be made to accommodate an attorney's visit where prior notification was not practicable.
- d. The attorney shall identify himself as the attorney for whom the visit has been approved by showing the letter from the inmate or his family requesting the visit or by showing such other information that would identify him as an attorney of the inmate he has requested to see.
- e. The Bureau of Prisons reserves the right to refuse admission to one of its facilities to those who fail to comply with regulations or who seek to exploit offenders. If there is any question about the identity of the attorney or his qualification as an attorney in good standing, the matter should be referred to the Office of General Counsel and Review.
- f. Visits between the attorney and his client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of his visit when he agrees in writing in advance of the interview that the only purpose of the recording is to facilitate the attorney-client relationship. Attachment A is a sample of a statement which might be used to secure compliance with this section.

10. CORRESPONDENCE BETWEEN ATTORNEY AND CLIENTS.

- a. Correspondence addressed to an attorney shall be mailed from the institution unopened and uninspected. A statement to the attorney, from the Chief Executive Officer, cautioning against 1) use of this mail for purposes other than those within the purview of the attorney client relationship, 2) transmission of contraband, or 3) forwarding

- c. If any matter on unauthorized correspondence, should be attached. The attorney should also be advised that mail addressed to the inmate will be opened and inspected in the presence of the inmate, if the attorney indicates on the incoming envelope that this is his presence. Attachment A is a sample of that statement. In addition, inmates should be advised that at their option and with the consent of their attorney, mail from the attorney will be opened in their presence but that if this election is made, it could cause some delay in the delivery of incoming correspondence.
- b. Correspondence addressed to an inmate by an attorney may be opened, solely for the purpose of inspection for physical enclosures constituting contraband. This mail is not to be read nor copied. Enclosures, however, may be examined to make certain that they are within the scope of the attorney-client relationship. The contraband need not be returned to the sender but may be referred to the appropriate investigating agency and the sender may thereafter be precluded from the provisions of this policy statement with the approval of the Office of General Counsel.
- a. Incoming correspondence shall be stamped immediately on arrival, on the envelope and letter, to show time of receipt. When the election is made under (a) above to have the mail opened in the inmate's presence, the contents shall be marked to show time of delivery upon opening the envelope.
- d. When, in emergency circumstances, a telephone call between the attorney and inmate is authorized, the institution staff shall assure that the person is an attorney, and shall then not monitor the conversation.

*Norman A. Carlson*

NORMAN A. CARLSON, Director  
Bureau of Prisons

Attachment  
1001, 18  
6-8-73ATTACHMENT A

"\_\_\_\_\_, a licensed attorney in the State of \_\_\_\_\_, with offices at \_\_\_\_\_, \_\_\_\_\_, visiting \_\_\_\_\_, \_\_\_\_\_, agree that my visit with this inmate is for the purpose of facilitating in the attorney-client relation and for no other purpose. I agree that any tape-recording or other recording made by me will be used only to facilitate this relationship.

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ATTACHMENT B

This institution retains the right to open mail from attorneys to inspect for contraband. This inspection will be done in the presence of the inmate. If the attorney so indicates on the outside of the incoming envelope. This could caused some delay in delivery. Language on the envelope could be substantially as follows: "This envelope should be opened only in the presence of the addressee."

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BUREAU OF PRISONS

WASHINGTON, D. C. 20537

# Policy Statement

SUBJECT: CORRESPONDENCE REGULATIONS

7900.1A

9-16-72

1. PURPOSE: To establish, encourage, and insure meaningful correspondence procedures for sentenced and unsentenced prisoners in federal institutions.

2. RELEVANT AUTHORITIES: Policy Statement 7900.1 (Manual Bulletin 96 (Rev.) dated 12-20-62 is hereby superseded).

3. DISCUSSION: Constructive, wholesome contact with the community is a valuable therapeutic tool in the overall correctional process. At the same time, basic controls need to be exercised in order to protect the security of the institution, individuals and/or the community-at-large.

The size and complexity of each institution, the degree of sophistication of inmates confined in each of the facilities, and other variables indicate the necessity for flexibility in correspondence regulations.

All institutions are authorized to establish upon correspondence regulations. If an institution can justify the need to retain limited or restricted correspondence, the request and justification will be submitted to the Assistant Director, Division of Institutional Services, for review and final determination.

The Institution Policy Statement concerning correspondence should be given the widest and most complete distribution possible to staff and inmates.

4. PREREQUISITES FOR OPEN CORRESPONDENCE: Open correspondence privileges may be awarded to inmates who demonstrate a willingness to accept this privilege in a responsible and mature manner. This responsibility implies that all correspondence will be directed toward socially useful and rehabilitative goals. Evidence that a particular inmate is violating the privilege of open correspondence by becoming involved in illegal activities, or whose correspondence is frequently rejected for reasons outlined in 4.a, may be placed on the restricted correspondence list for such time as the adjustment committee deems appropriate. Inmates who explicitly mail an obscene number of letters, or who explicitly attempt to correspond with persons and/or businesses unknown to them except through ads in a newspaper or magazine, may also be placed on the restricted list, as deemed appropriate by the adjustment committee.

Specific care should be given during the institution period and thereafter in helping inmates understand their responsibility for open correspondence. Attention should be given to conditions which cause unnecessary

with funds or staff or undue pressure to the inmate, his family, or community members. Many problems can usually be eliminated by definitive guidelines concerning inmate correspondence with inmates in other institutions, family members of other inmates, and persons not known prior to commitment, and the utilization of enclosures, educational material, price lists, unauthorized newspapers, printed material, food samples, etc.

PRISONER'S FIRM-RESTRICTED CORRESPONDENCE. There may be occasions when an inmate will be required to submit a list of correspondents for approval. Usually, this determination will be made by the classification committee or treatment team at the time of classification. Inmates whose correspondence may be restricted include major security risks, major participants in organized criminal activities, and inmates or highly publicized offenders. When it is necessary to set up a restricted correspondence list, the following guidelines are applicable:

a. Members of the immediate family and close relatives. There should be no question about the propriety of correspondence with the inmate's father, mother, wife or husband, and children. Other relatives including brothers, sisters, aunts, grandparents, cousins, etc., may be placed on the approved list, if the inmate wishes to correspond with them, following such evaluation as is warranted and practical. This judgment can usually be made on the basis of the probation officer's presentence report, and interview of the inmate.

b. Non-relatives. Inmate correspondence with friends, former business associates, and other persons outside the immediate family may be authorized whenever it appears that such correspondence will not adversely affect the inmate's chances of rehabilitation or that it will not be detrimental to the well-being of the inmate or his correspondent. Correspondence with former business associates must be limited to social matters. As a general rule, social correspondence will be limited to those persons known by the inmate prior to his commitment, although unusual circumstances may occasionally warrant an exception to this general rule.

c. Correspondents with Criminal Records. The existence of a criminal record, in and of itself, should not constitute a barrier to proposed correspondence. Consideration should be given to the nature and extent of the criminal record weighed against the aims to be achieved in permitting such correspondence. This principle is particularly applicable to relatives who may have a record of arrests and convictions. The guiding consideration as criteria for all correspondence should be: (1) is the correspondent genuinely interested in the inmate or just a chance acquaintance; or (2) does the correspondent seek to continue a previous friendship or is the correspondence likely to result in some future relationship detrimental to the inmate or to the correspondent?

d. Verification Procedure. Each year it becomes increasingly difficult to obtain information from law enforcement agencies on proposed correspondents. For this reason, an attempt should be made to secure necessary information from other sources, including the inmate, the proposed correspondent, and occasionally the probation officer or other community resources. Each institution will need to plan its own verification procedure, depending upon the sophistication of the inmates with whom they are concerned and knowledge of resources for verification.

a. Number of Authorized Correspondents. The number of names which may be on the approved list of correspondents is to be limited to a reasonable number, but generally a minimum of 12 outgoing letters a week will be authorized.

b. GENERAL PROVISIONS FOR ALL CORRESPONDENCE.

a. Number of Letters Allowed. We recognize the importance of maintaining family and community contacts and for this reason the government will pay postage on a "reasonable" number of letters. Use of certified or registered mail will be permitted providing the inmate has funds available to pay for the use of these services.

Chief Executive Officers are authorized to set the number of letters per week in overseas correspondents (including Alaska and Hawaii) for which the institution will pay air postage.

Ordinarily, no maximum number shall be set for the number of incoming letters any one inmate shall receive during a week.

An arbitrary limitation need not be placed on the number of pages in either outgoing or incoming letters, but inmates shall be advised to keep their outgoing correspondence to a "reasonable" length.

b. Inspection of Mail. All incoming mail shall be inspected for money, enclosures, contraband, and for content which would incite conduct which is illegal.

Each institution shall establish procedures for monitoring all outgoing and incoming mail. In the juvenile and youth institutions, the camps, and in the adult correctional institutions and reformatories, "spot-checking" of most incoming mail should provide sufficient control. "Spot-checking" is defined as a procedure for reviewing or scanning a limited number of all letters received for mailing or for distribution to the inmate body. For example, spot-checking might involve scanning one of every ten or fifteen letters being mailed from or received at the institution. It does not imply that every letter should be scanned. It should be done frequently enough to maintain security, learn about a particular problem confronting the inmate or alert the staff to any matter that may help in evaluating the inmate's progress. For the adult penitentiaries and the Medical Center some careful scrutiny may be desirable. All institutions will adopt a procedure whereby both the incoming and outgoing mail of a particular inmate may be subjected to close scrutiny.

The number of inmates whose mail is being given such attention should be kept to a minimum, commensurate with the mission of the institution. The adult penitentiaries particularly, but other institutions as well, will wish to give close scrutiny to the outgoing and incoming mail of notorious racketeers, subversives, inmates who present difficult adjustment problems, serious escape risks, the mentally ill and perhaps others. Responsibility for maintenance of such a listing shall rest with the Associate Warden or Associate Warden and the Chief Classification and Parole. Reading, scanning or spot-checking either incoming or outgoing mail must not interfere with prompt handling of the mail.

c. Rejection of letters. During the Admission-Orientation period, and regularly thereafter, all inmates should be advised of the reasons for which incoming and outgoing mail will be rejected. Pursuant to these revised regulations all inmates must now assume personal responsibility for the contents of their correspondence. In general, inmates should be cautioned against including any of the following kinds of material in their letters:

- (1) Any material which might violate prison regulations, i.e., threats, blackmail, contraband or which indicates plots of escape.
- (2) Discussions of criminal activities.
- (3) No inmate may be permitted to direct his business while he is in confinement. This does not go to the point of prohibiting correspondence necessary to enable the inmate to protect the property and funds that were legitimately his at the time he was committed to the institution. Thus, an inmate could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution.
- (4) Letters containing orders or other obvious attempts to circumvent these regulations will be subject to rejection.
- (5) Insofar as possible, all letters should be written in English, but every effort should be made to accommodate those inmates who are unable to write in English or whose correspondents would be unable to understand a letter written in English. The criminal's employment of the inmate, the relationship of the inmate and the correspondent are factors to be considered in deciding whether correspondence in a foreign language should be permitted.

Any outgoing letter scheduled for rejection because of an obvious violation of regulations should be returned to the inmate, along with a brief note as to the reason for rejection, as promptly as circumstances permit. Questionable outgoing letters should be referred immediately to the appropriate supervisor for review.

If an incoming letter is to be rejected and returned to the sender, it should be accompanied by a brief but courteous letter of explanation. Questionable incoming letters should be referred to the appropriate supervisory personnel. Further reference to the Associate Warden and/or the Warden may be made when questions of policy, public relations, etc., are involved.

JAMES, SA  
9-16-72d. Prosecution for Violations of Postal Regulations.

All inmates should be cautioned during the Admission-Orientation period and regularly thereafter that all letters placed in the U. S. Mail are placed there upon the request of the inmate, who must assume personal responsibility for the contents of each letter he or she deposits. Threats, extortion, etc., may result in prosecution for violation of the U. S. Postal regulations. The institution cannot assume responsibility for any such material being included in either incoming or outgoing letters but whenever such material is discovered in the incoming mail, the material may be returned to the sender, or turned over to the appropriate law enforcement agency for possible prosecution.

e. Attorneys. Inmates shall be permitted to correspond with

attorneys in conformity with Bureau of Prisons Policy Statement, 2001.1A dated June 29, 1971.

f. Handling of Incoming and Outgoing Mail. Some institutions

may wish to establish a procedure for keeping a record of the mail of certain selected inmates, when this is necessary and desirable.

g. Correspondence While in Admission-Orientations, Holdover Status, and of Unsettled Prisoners. It is of course

desirable that inmates in Admission-Orientations and "holdover" status be permitted to receive and send letters particularly to members of their immediate family during these particularly difficult periods. Until the inmate's status is determined, such inmates may be permitted to write to at least one and possibly two close relatives immediately, on the basis of an evaluation of whatever information is available. It is particularly important that inmates in "holdover" status, as a result of bus or other forms of transportation, be permitted correspondence privileges as similar to those of all regularly confined inmates as circumstances will permit.

There will be no limitation or restriction on correspondence for sentenced prisoners. Sent letters may be mailed to attorneys of record, judges, the prosecutors in the district where committed or where charges are pending. Other letters will be inspected for contraband only and every attempt will be made to allow unrestricted mail privileges as long as sound custodial practices are followed.

h. Correspondence for inmates in Segregation and Administrative

Segregation. Inmates in segregation shall be allowed full correspondence privileges, unless his misconduct involves a serious violation of correspondence regulations.

A person who seriously violates institution mail regulations should not suffer indefinitely the loss of his basic correspondence privileges. It is obvious, however, that such violations should result in close scrutiny of the offender's mail until such time as it seems evident that further violations will not occur. Loss of other institution privileges, i.e., movies, participation in arts and crafts, etc., may be used by the Adjustment Committee for violation of correspondence privileges.

7. SPECIAL PURPOSE LETTERS. For inmates on the restricted correspondence list, the warden may authorize special purpose letters in addition to or apart from the regular allowance of outgoing correspondence to persons on the approved mailing list. Authorization of Special Purpose Letters shall be the responsibility of the Classification and Parole Officer or such other member of the staff as may be designated by the warden to supervise inmate correspondence. Special Purpose Letters may be approved for mailing when, in the discretion of the C&P Officer or other designated officer, they are legitimate, necessary, related to matters which cannot conveniently be handled by regular correspondence, or it may be a single letter to a person not included among the correspondence initially approved.

8. Petitions to courts, writs of habeas corpus, motions, appeals, and other legal papers shall be forwarded promptly to the appropriate court as a Special Purpose Letter payable by the government. If an inmate desires the institution to certify the mailing of particular correspondence, for documentation purposes, i.e., legal, detainees, business or personal purposes, a procedure should be set up for maintaining this information in the control file.

9. There should be no need for Special Purpose Letters for those inmates who have open correspondence privileges.

10. PRISONERS' MAIL BOX (PMB). See Bureau of Prisons Policy Statement 7305.2A dated December 28, 1967.

11. INMATE CORRESPONDENCE WITH REPRESENTATIVES OF THE PRESS AND NEWS MEDIA. See Bureau of Prisons Policy Statement 1230.1A, dated February 11, 1972.

12. REFERRAL TO BUREAU. Whenever the Chief Executive Officer is doubtful about the propriety of any incoming or outgoing letter, or has any question concerning an interpretation of the regulations, he should refer the problem to the Bureau, Division of Institutional Services.

13. INSTITUTION POLICY STATEMENT ON CORRESPONDENCE. Upon receipt of this Policy Statement, each institution will review and update their local policy issuance on this subject. Two copies of the local policy statement shall be directed to the office of the Assistant Director, Division of Institutional Services, upon completion.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.

## SUPREME COURT OF THE UNITED STATES

No. 78-1265

WILLIAM B. SAXBE, Attorney General of  
the United States, et al., PETITIONERS,

v.

THE WASHINGTON POST, et al.

ORDER ALLOWING CERTIORARI. Filed March 4, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The time for filing the appendix and briefs is accelerated so that this case may be argued in tandem with consolidated cases Nos. 78-764 and 78-918. A total of two hours is allotted for oral argument for all three cases.

